

104
**THE IMPACT OF SOLID WASTE FLOW CONTROL
ON SMALL BUSINESSES AND CONSUMERS**

Y 4. SM 1:104-50

The Impact of Solid Waste Flow Cont...

HEARING

BEFORE THE

**COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES**

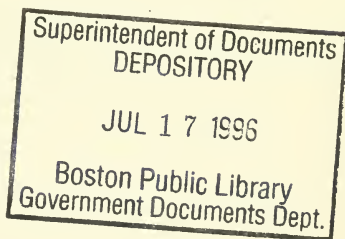
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

WASHINGTON, DC, SEPTEMBER 13, 1995

Printed for the use of the Committee on Small Business

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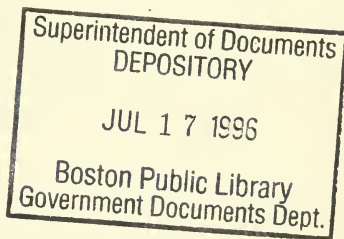
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THE IMPACT OF SOLID WASTE FLOW CONTROL ON SMALL BUSINESSES AND CONSUMERS

WEDNESDAY, SEPTEMBER 13, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice at 9:30 a.m., in room 2359, Rayburn House Office Building, Hon. Jan Meyers (chairwoman of the committee) presiding.

Chairwoman MYERS. Good morning. Today, the Small Business Committee will hold an informational hearing on the impact of solid waste flow control on small businesses and consumers.

What is flow control and why is the Small Business Committee holding this hearing.

Flow control is the legal authority given to States and local governments to specifically designate where municipal solid waste may be taken for treatment or disposal.

Without flow control, small business consumers and others who must pay to remove their waste usually have choices over who takes the trash. Without flow control, small business owners have choices over where to take the trash.

In May 1994, the Supreme Court decided *C&A Carbone versus The Town of Clarkstown* and declared a flow control ordinance violated the Interstate Commerce clause of the Constitution. In effect the court ruled that solid waste constitutes an article of interstate commerce and its movement cannot be restricted without explicit Congressional authority.

In response to the Supreme Court decision, the House Commerce Committee is now considering legislation. On May 16th, the Senate passed legislation that would grant limited flow control authority.

Earlier this year, a number of small business people and several small business organizations approached me and expressed a concern that the congressional debate on flow control was dominated by local government and big waste company perspectives, that there is an important need to air small business concerns.

I believe an important mission of this committee is to operate as an aggressive forum for the small business community. We on this committee often find ourselves working to be sure that the interests of small business are heard and represented at the table when the important congressional policies are decided. For those reasons, we are holding today's hearing.

We will hear from a number of small business witnesses today and receive arguments both for and against flow control. In May, I asked the Chief Counsel for Advocacy at the Small Business Administration, Jere Glover, for his comments on flow control, which he will provide today. The EPA was asked by Congress to study the issue in 1993. The Director of the Office of Solid Waste will describe their findings today.

Mayor Sharpe James of Newark, New Jersey and County Commissioner Randy Johnson of Hennepin County, Minnesota, will give us the pro and con positions from the local government perspective. I thought that it was important to have this testimony in context with our small business and Federal agency witnesses.

I want to thank all our witnesses for their participation today and I know many of you have come a long way. I spoke to the chairman of the Commerce Committee before announcing this hearing to let him know of our plans and he indicated his strong interest in seeing the results of this hearing and sharing it with his committee.

I also think that we will all learn a lot this morning and I look forward to the testimony. At this point, I will yield to the ranking member, Mr. John LaFalce.

[Chairwoman Meyers' statement may be found in the appendix.]

Mr. LAFALCE. Thank you very much. I think this is an extremely important kind of hearing, and I thank the Chair for calling it. The issue of flow control—and we ought to come up with a definition of flow control because it means different things to different people—is very controversial.

It affects municipalities, it affects the big companies and the small business community, intrastate ramifications, interstate ramifications and national ramifications. I'm particularly cognizant of this, coming, as I do, from western New York, where we have considerable activity involving some of the major waste companies. We also are right across the border from Canada.

So, all I'm going to do is say I think this is going to be an excellent hearing. We have a group of witnesses that should give us a balanced perspective and hope we have time to hear them all.

Chairwoman MEYERS. Thank you very much, Mr. LaFalce. We will start moving in, and we'll try to keep going as much as we can because I'd like to have—the group may come and go a little bit during the morning because the hearing will be long and we usually try to keep them to 2 hours. But on this one, we had so many requests to be heard and I thought as long as we're having the hearing for education purposes, let's do it right.

On our first panel, we will start with Mr. John Broadway, who is the Virginia State Director of the National Federation of Independent Business. Mr. Broadway?

Panel One:

TESTIMONY OF JOHN BROADWAY, VIRGINIA STATE DIRECTOR, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. BROADWAY. Thank you, Madam Chairwoman. On behalf of more than 600,000 members of the National Federation of Independent Business and 13,000 members in the Commonwealth of

Virginia, I appreciate the opportunity to be here today and present the views of the small business owners.

By way of introduction, NFIB is the Nation's largest business association.

Chairwoman MEYERS. Mr. Broadway, I wonder if all of you could remember to speak very directly into the mike because they're quite directional. We can hear you here but sometimes they can't in the back of the room, so, thank you. We have lighted the lights and when the light turns red, don't feel that you have to stop in the middle of a sentence, but if you could then summarize and conclude, thank you very much. Proceed.

Mr. BROADWAY. Thank you. About 50 percent of our members are in service and retail industries, 25 percent are in manufacturing and construction and the remainder in businesses ranging from agriculture to wholesale services. Our typical member has five employees and grosses about \$250,000 in revenue annually.

A vast majority of these small businesses are customers of waste disposal services. Consequently, any effort to maintain and expand the use of flow control ordinances negatively affects the small business owners. Flow control ordinances force waste disposal customers to use Government mandated facilities, and in effect create monopolies.

These monopolies by their very nature give an advantage to one entity to the exclusion of all others. It makes little difference whether the local government or a separate entity with a long-term contract runs the facility. The effect is the same. Monopolies don't have to face free market competition and customers have no power to bargain for better rates on service.

Flow control ordinances have their most obvious impact on price. Currently, in communities where there are no flow control ordinances, both large and small haulers, processors and recyclers compete for market share. By contrast, where ordinances do exist, prices are artificially set to ensure a specific payout. In some instances, prices are inflated to pay for other sorts of Government services.

I brought a chart today, which is to your right, and illustrates a recent study, I believe in May of this year, by the National Economic Research Associates, showing that flow control results in an average increase of 30 percent in waste disposal costs.

I would ask that this be entered into the record. I believe there's a copy of the study for you and other members of the committee.

Chairwoman MEYERS. There is, and without objection, it will be included in the record.

[The material submitted by Mr. Broadway may be found in the appendix.]

Mr. BROADWAY. These monopolies do limit price, and in fact, they place a very real tax on small businesses. This tax is also known as a tipping fee, and it is not inconsequential if the price of any service, particularly one that's nondiscretionary, as waste disposal, can be a significant expense.

One other aspect of this in a monopolistic flow control is inefficiency. Instead of building disposal services to respond to need, these ordinances result in facility-driven systems. Government-backed facilities don't need to seek business to stay in business.

There's no incentive to improve the facility or attempt to cut costs. Certainly, there is no incentive to pass savings on to the customers.

Now, arguments have been made that local governments need flow control ordinances to plan for the present and future waste management. We will agree that such planning is desirable but don't believe waste management requires flow control. Management in the local governments can be performed through regulating the quality of service, but not by performing it themselves.

I think a good example of that is going on in Virginia right now. A few years ago, the city of Richmond and 12 surrounding counties and other independent cities formed the Central Virginia Waste Management Authority. One of their goals from the beginning has been to maximize the use of existing private waste management companies.

In fact, the director of the authority, Kevin Burns, has written—I would like to just quote two sentences from Mr. Burns; that, "Unlike most other regional authorities, this authority has implemented all of its programs through private service contracts for recycling and other waste management services. The result has been the development of an integrated regional waste management program. The public investment in contract services is stimulated with the creation of private competition, jobs and a private tax base."

Now, in conclusion, although small business owners don't support flow control ordinances, we are not insensitive to the problems of communities that already have the facilities in place. If Congress does pass flow control legislation, NFIB strongly urges a strictly limited grandfather clause be established.

We don't believe that communities with current programs should be destined to live under flow control in perpetuity. Once a currently operating facility's life is finished, any grandfathered flow control ordinance should end.

Small business owners face many obstacles in maintaining their businesses, creating jobs and generating revenue for their communities. They shouldn't be placed with the added burdens as a result of flow control ordinances. We urge the committee to consider the negatives consequences of establishing long-term monopolies that force small businesses to purchase services from a single supplier. We don't believe it's in the best interest of small business or the Nation. Thank you.

Madam Chairwoman, I would add; it's just been brought to my attention this morning a letter from the National Taxpayers Union to Chairman Bliley expressing their opposition to flow control as well. I was wondering with your permission, if we could enter this into the record as well.

Chairwoman MEYERS. Without objection, that will be done.

Mr. BROADWAY. Thank you.

Chairwoman MEYERS. Thank you, Mr. Broadway. Our next witness is Mr. John McKeon, and he's vice-president of GZK, Inc. of Dayton, Ohio. He is here representing himself and the National Restaurant Association.

[Mr. Broadway's statement may be found in the appendix.]

**TESTIMONY OF JOHN MCKEON, VICE PRESIDENT, GZK INC.,
NATIONAL RESTAURANT ASSOCIATION**

Mr. MCKEON. Thank you. Good morning, Madam Chair and members of the committee. My name is John McKeon. I am vice-president of GZK, Inc. GZK is a franchise operator of 51 restaurants in five counties in southwest Ohio. We are better known to our customers as Arby's, Lee's Famous Recipe, and Chuck's Burgers and Stuff. We employ approximately 1,300 people. I am speaking on behalf of my own company and the National Restaurant Association.

I want to thank the committee for the opportunity to speak on this issue. It's important that those who pay the bill are heard from and we appreciate the interest of the Small Business Committee on the issue of flow control.

For the uninitiated, flow control allows a political jurisdiction to determine which disposal method we will use and which facility. It does not matter that there may be a number of options open to us, we lose the ability to choose.

Last year, the Supreme Court struck down the practice of flow control. We are concerned that during this session of Congress, an attempt will be made to limit the options GZK and other businesses will have for refuse disposal.

The Commerce Committee will soon consider a bill that would re-establish Government sanctioned monopolies in the area of waste collection services. These monopolies operate without any specific benefit to us, the customers, at a cost much greater than we can negotiate on the free market.

Business owners are concerned with a number of aspects of flow control. I think I can best illustrate this by describing the trash removal scenarios in two of the counties our company does business in.

In Miami County, our trash is picked up by a contracted hauler and taken to a county-owned and operated transfer station. The trash is dumped at the station at a cost of \$50 a ton, which is passed on to us, the customer. The trash is then reloaded onto other trucks and hauled to a privately owned landfill in another county. The irony of this situation is that the landfill is owned by our contracted hauler.

My company gets to pay for all this hauling and handling and for what purpose? Of course, we know the purpose. It's so that a fee or a tax can be placed on our trash. Call it whatever you want, it's still unnecessary.

My company also gets to pay for the inefficiencies associated with having to take trash to the county's designated location. Movement of trucks cannot be based on the most efficient routing. Achieving full loads becomes a problem when county lines have to be crossed.

Most of our stores are located in Montgomery County. Haulers are required to take trash to a designated location, in this case, one of two county-owned and operated incinerators.

Tipping fees are charged at the current rate of \$41.06 a ton. The costs do not stop there however. A Montgomery County disposal fee is also assessed. Last year this fee cost our company \$19,861. This year the amount will be \$34,667, an increase of 75 percent.

The reason for this outrageous hike is that the incinerators are not in compliance with EPA directives and a rehab is necessary at an estimated cost of \$113 million.

But now the county is facing another dilemma. It seems the contractors bidding the retrofits are unable to guarantee the county that when all the work is done and millions of dollars spent, the incinerators will be in compliance with the law.

A plan to mothball the incinerators, convert to transfer stations and haul the trash to a landfill in another county is seriously being considered. This will cost more money, according to the county, and we all know who's going to have to pay. Maybe they just need to take themselves out of the loop.

We are all concerned with the environment. It is not good business to be otherwise. In Montgomery County, we are mandated to dispose of our trash in a manner that is in violation of the very laws that were passed to protect the environment.

There are those who will tell you that facilities will fail if flow control goes away, and some might, and maybe they should. We understand that there may be an attempt to protect publicly financed facilities. Perhaps a way can be worked out to privatize these facilities without flow control and then be operated in such a manner so as to retire the debt.

There are other facilities that have little or no debt, are privately owned and operated, who will also be protected by the Commerce Committee bill. As consumers, we wonder why the Federal Government would want to ensure the profit of one business at the expense of another. Following that line of reasoning, we should be able to get a Federal mandate requiring everyone living in the counties that GZK operates in to eat at our restaurants. Sound stupid? That's the way we see flow control.

GZK pays a wide range of prices for the very same services. Prices for disposal range from \$25 a ton to \$61 a ton, not counting Montgomery County's additional disposal charge. This year, GZK's cost for disposal of trash was \$135,000, an increase of 14 percent over the previous year. That's with the recycle program in place.

We should have the option to pick the most competitive alternative available to us. We understand that our costs would be cut 10 to 40 percent without flow control. These are numbers we cannot ignore.

If a political jurisdiction wants to tax our company to pay for some necessary function, let them, but do not force us to use services we don't need at facilities that should never have been built in order to generate money for some Government program.

Thank you for your consideration of the problems facing small business with this issue.

Chairwoman MEYERS. Thank you very much for your testimony, Mr. McKeon.

Ms. CHERYL L. Dunson is Legislative Affairs Director of Santek Environmental, Inc., and Friends of Locally Owned Government Waste, FLOW, from Cleveland, Tennessee. Ms. Dunson?

[Mr. McKeon's statement may be found in the appendix.]

**TESTIMONY OF CHERYL L. DUNSON, LEGISLATIVE AFFAIRS
DIRECTOR, SANTEK ENVIRONMENTAL, INC., AND FRIENDS
OF LOCALLY OWNED GOVERNMENT WASTE**

Ms. DUNSON. Thank you, Madam Chairlady, for the opportunity to address you and your peers today.

Similar to monopoly, which is the exclusive control of a market by one company or trust, an oligopoly is defined by Webster as "the control of a commodity of services in a given market area by a small number of companies or suppliers."

Chairwoman MEYERS. Ms. Dunson, could you tip that down a little bit so it's a little more direct? Thank you.

Ms. DUNSON. You're welcome.

According to data compiled by EPA in its Municipal Solid Waste Factbook, 66 percent of the Nation's major landfills are owned and controlled by private waste companies. Most of these facilities are controlled by seven large waste conglomerates that feed their landfills with waste on their trucks.

As we speak, an oligopoly continues to grow in the solid waste industry, which threatens the Nation's free enterprise system and severely limits small business owners' ability to manage their waste economically.

The issue of who controls waste streams and their destinations is serious and it's real. It's about the increase in private dominance of a vital public utility. It's about high-powered lobbyists and a multibillion dollar industry. It's about the livelihoods of small independent haulers who don't own landfills and the negative repercussions for the Nation's small business owners. It's about perceived truth and real truth. Most of all, it's about all of us.

Working under the authority of local government, Santek is a full-service manager of publicly owned landfills. I'm also here today representing FLOW, a grass-roots coalition initiated by Santek consisting of local governments and small independent haulers.

Through Santek's business experience and FLOW contact, I can point to direct instances that prove, number one, local government's inability to exert some control over its waste streams severely limits the number of waste companies that can compete for business.

In turn, this lack of control promotes an unlevel playing field that benefits large, vertically integrated companies and works against the spirit of free enterprise. Augusta, Georgia is home to a prime example where 18 independent haulers are trying to compete with a large waste conglomerate's transfer station and discounted tipping fees.

Finally, this private cartel is managing to turn the majority of the Nation's small business owners into captive waste disposal customers who are paying exorbitant disposal costs with no other options.

There are many inconsistencies to the trade groups' anticompetitive argument regarding flow control. It is a myth designed to threaten small independent businesses with dreaded Government regulation. It is also a deplorable excuse shrouded by the Commerce Clause that allows vertically integrated companies to monopolize a public utility that's as vital to a community as electricity and water and fire and police protection.

Auburn, Alabama is perhaps more famous for its football team than its solid waste situation. But consider small business owners like Don Atwell, who owns the Bread and Buggy restaurant and convenience store. In Mr. Atwell's community, only one hauler competes for disposal services because the only landfill within a 50-mile radius is owned by the same company. I use the word "competes" facetiously because there is no competition in Auburn, Alabama because no other company is able to contend with the discount tipping fees that the large conglomerate assesses its trucks. This is good for small business?

Approximately 2½ years ago, the city of Jackson, Mississippi chose to privatize the operation of its landfills. With commitments from 43 municipalities and a guaranteed annual delivery of 180,000 tons of waste, Santek submitted a bid that would have resulted in a savings to the city and all of its entities, including small businesses, of \$30 to \$36 million during the 20-year contract.

But the majority of the landfill's anticipated tonnage was hauled by the next highest bidder. The city was unable to guarantee a flow of waste to the facility because it couldn't legally direct the haulers' trucks to the landfill. So, to prevent the waste from going elsewhere, the city was strong-armed into negotiating an agreement with the higher-priced hauler. I'm appealing to you to consider, is this the same entrepreneurial spirit of free competition that is so widely perpetuated by the large trade organizations when it attempts to convince Congress that flow control is unnecessary and unwarranted?

It Roane County, Tennessee, just south of Knoxville, the community's several hundred business owners will soon become the victim of that local government's inability to direct waste stream. Roane County doesn't have a major landfill. With minimal volumes and lower populations, it anticipates closing its landfill's doors this spring. The waste will be hauled to a private landfill in a neighboring county. Roane County and its three sister cities are being wooed with teaser disposal rates that don't reflect the true cost of disposal. It appears to be a good deal for local governments, but for how long? And what about the small business owners who are left to fend for themselves and will have to pay the going rate?

Ironically, the landfill recently lowered its tipping fees \$5.50 per ton. But knowing that the facility's days are numbered, the area's large haulers still passed along the cost of living increase to small businesses and residents.

Talk to Gary Deaver, owner of Sparky's Waste Control in Springfield, Missouri. He'll tell you how hard it is to compete with the large waste conglomerates and how, because he's not offered the same discount tipping fees at their private landfill, he's prevented from competing for commercial accounts.

Travel in southeastern Kentucky where just recently a large waste conglomerate bought three of its competitors and now has a virtual lock on the landfills in that community. Company officials pledged they wouldn't increase rates. But within a month, rates were raised to bring them in line with other private landfills in the State, they said. They also assured residents that a monopoly didn't exist.

Finally, visit John Polonus in Augusta, Georgia, who, along with 18 other local haulers, are being courted to use the large waste conglomerate's transfer stations. As John so aptly stated in FLOW's recent newsletter, "Offers of discount rates are appealing, but only temporarily. We're smart enough to know that if they're willing to discount our trucks, what kind of rates are they willing to give their own?"

There are many more examples of people like John Polonus and Don Atwell, and there are many more illustrations of communities like Springfield, Missouri and Roane County, Tennessee. But you won't hear about them until it's too late. As it does landfills and disposal rates, the oligopoly will stifle and shape the truth. It will control and distort the issue to protect its billion-dollar industry. The fate of small business owners will only get lost in its crushing weight.

Flow control legislation is one way to regulate oligopolies, which is why the oligopoly is attempting to turn this issue into a totally public versus private fight. The facts, however, speak for themselves. Small businesses are just as at risk of becoming captive customers to large waste conglomerates, just like cities and counties.

Remember the railroad trusts at the turn of the century? He who owned the track ran the train. Similar to the synergy between a train and its tracks before the railroad trusts were busted, a \$10-million landfill investment can result in more than \$200 million of revenues to landfill owners. The synergy doesn't require much more explanation.

A facility deserving of flow control should be selected through an open, competitive bidding process. A competitive procurement process allows private providers to compete and at the same time meet all the other listed needs of local government. Government controls the environmental and management criteria and management criteria to meet mandates.

A public-private partnership can result in cost savings, an increased commitment to environmental integrity, and long-term disposal capacity.

But no matter to which degree solid waste services are privatized, some control must be retained by local governments. Otherwise, the Nation's solid waste system will eventually become an industry controlled by a few powerful companies, and that's not good business for America's small businesses. Thank you.

Chairwoman MEYERS. Thank you very much, Ms. Dunson. You reminded us that there are good arguments on every side of this question.

Our next witness is Mr. David Muchnick. He's president of South Bronx 2000 Local Development Corp., Bronx, New York. Mr. Muchnick?

[Ms. Dunson's statement may be found in the appendix.]

TESTIMONY OF DAVID MUCHNICK, PRESIDENT, SOUTH BRONX 2000 LOCAL DEVELOPMENT CORPORATION

Mr. MUCHNICK. Thank you, Madam Chairwoman and members of the committee, for the opportunity to appear here today. In addition to being the president of Bronx 2000, I also serve as the chief executive officer of its R2B2 plastics recycling subsidiary, its Big

City Forest reclaimed wood products manufacturing company, and a new Empire State Center for Recycling Enterprise Development.

Bronx 2,000, in fact, is a not-for-profit development organization that has been successful in creating, incubating and commercializing community-based recycling enterprises that reduce the waste disposal costs for local businesses, create jobs and conserve natural resources, forests and energy.

In our 15 years of enterprise development experience, we've developed two national businesses. We supply investment-grade companies; we conduct R&D projects with national industry trade associations; and we pioneer recycling technologies.

Together, our enterprises have sold over 200,000 tons of secondary materials worth—over \$15 million in secondary material sales. We've paid out \$4 million to local recyclers and employees and we've saved small businesses somewhere on the order of \$4 million in disposal costs.

The new Empire State Center is now focused on developing new environmental enterprises in the area of reclaimed wood products manufacturing and in manufacturing goods from durable plastics that come from things like the end-of-life TV cases and computer monitors and carpets and rugs.

We look unfavorably on flow control for two reasons. Primarily and first, flow control places control of the waste stream in the hands of operating systems and facilities that burn or bury valuable recyclable materials or that fail to optimize the quality and market value of such recyclable materials.

As a result, flow control undermines the opportunity to use these secondary materials to create or expand value-adding manufacturing businesses that can create blue-collar jobs and conserve natural resources.

Second, we object to flow control because it does burden small businesses with higher waste disposal costs. It denies them the opportunity to reduce these costs by source separating and recycling their own materials. It chills their willingness to source separate and recycle their own materials with the threat or the prospects of costly legal proceedings or defending enforcement actions. By limiting the availability of source-separated recyclable material from local businesses, it makes it more difficult for new and existing manufacturers to obtain and use secondary materials in their manufacturing processes.

With respect to my first objection, I'd like to illustrate the scale of the potential loss nation-wide. According to estimates that we've done at the secondary materials market prices that were prevailing this summer, the recyclable materials in the waste streams of the country's 49 largest metropolitan areas could have been worth about \$2.4 billion a year to the generators of these materials.

If these materials were processed to the specifications of end product manufacturers, their potential market value would have reached about \$6 billion a year. To illustrate the point locally, the comparable numbers for Kansas City, Kansas would have been \$4 million and \$10 million respectively. In Buffalo, New York they would have been \$19 million and \$46 million respectively.

On a national level, again, assuming that processing companies allocated 25 percent of their annual revenues to labor costs, then

the potential \$6 billion in market value could have generated about 60,000 jobs worth an average of \$25,000 per annum in wages and benefits.

What's at stake for small businesses in the policy choice between waste management systems that exclusively burn, bury or otherwise devalue recyclable materials on the one hand and systems that add value to such materials on the other hand can be illustrated by a comparison of conventional wood waste disposal with our own big city forest subsidiary.

In a nutshell, operators of conventional wood waste disposal facilities simply grind discarded wood—and that includes the oak, cherry, mahogany, and other hardwood and softwood species found in these discards—into fiber or chips that are worth about a penny or a penny and a half a pound in various markets. According to Resource Recycling Magazine, more than half of this ground wood ends up being burned, not recycled.

By contrast, big city forest takes in discarded wood shipping pallets and containers from local companies, we sort them by species, we reclaim and remill the lumber from the discards and we make new pallets, furniture and flooring and other value-added solid wood products. As a result, the same discarded oak shipping pallet that conventional wood waste disposal facilities devalue into 52 cents' worth of woodchips or fiber becomes, in Big City Forest's hands, oak stripped flooring with a sales price of about \$25.

Big City Forest also saves the local businesses which supply it with discarded wood millions of dollars a year annually in waste disposal costs. These are savings which can help keep these companies in our communities by allowing them to put the savings into maintaining jobs and business operations. Companies achieve these savings by source separating their discarded pallets and shipping them to us in their own 45-foot trailers that can carry three times as much material as can be put in the rollofts used by most carting companies. They can do it at one-fifth of the cost.

These cost savings bring me to my second objection to flow control, which you've heard generally today; that it raises the cost to local businesses. I won't elaborate on that point. I would simply stress two related matters. First, flow control or any analogous system that makes small business captive de jure or de facto to a single public or private sector waste hauler or waste disposal facility can deny small business the opportunity to reduce their cost by source-separating and marketing, donating, or otherwise distributing their recyclable materials on their own.

For unless flow control excludes from its coverage, by definition, the recyclable commodity materials that are source separated by a generator and intended for sale or reuse, small business will generally not perceive source separation to be an available or legal option. The prospects of having to challenge flow control in their own legal proceeding or in defense of an enforcement action will chill their willingness to try source separation. Thank you very much.

[Mr. Muchnick's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Mr. Muchnick. This has been an extremely interesting and informative panel, and I wonder if I could rearrange you now a little and have you stay at

the table during our next panel, and then we will have our first round of questions, if that's all right with the committee.

So, Mr. Muchnick, if you and Ms. Dunson will move this way and if you can get another chair, Mr. Broadway. I didn't mean to bring you into the furniture moving business. If you could take that chair and put it at the end of the table and both of you move down one, then we will call for Mr. Jere Glover and Mr. Michael Shapiro to come to our two center chairs.

I think, Mr. Shapiro, that I believe we will start with you. I know that Mr. Glover is here because I saw him a moment ago, but he's disappeared temporarily. Mr. Michael Shapiro is director of the Office of Solid Waste at the Environmental Protection Agency.

Panel Two:

TESTIMONY OF MICHAEL H. SHAPIRO, DIRECTOR, OFFICE OF SOLID WASTE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. SHAPIRO. Good morning, Madam Chairwoman and members of the committee. I'm pleased to have the opportunity to appear before the committee this morning to discuss municipal solid waste flow control and to provide an overview of the Agency's report to Congress on this issue.

In September 1992, Congress asked EPA to develop and submit a report on flow controls as a means of municipal solid waste management. The report, which was issued in March, 1995, presents the Agency's answers to the questions raised by Congress. Specifically, it reviews States with or without flow control authority and describes the impacts of flow control on the protection of human health and the environment, and on the development of State and local waste management capacity and on the achievement of State and local goals for source reduction, reuse and recycling.

I will now explain our findings with respect to the report. The first question given to us by Congress asked EPA to present a comparative review of States with and without flow control authority. We found that 35 States, the District of Columbia and the Virgin Islands authorized flow control directly. Four additional States authorized flow control indirectly through mechanisms such as local solid management plans and home rule authority. Eleven States have no flow control authority. We found that within States which had flow control authority, municipal use of this authority can vary significantly.

Congress' second question asked EPA to identify the impacts of flow control ordinances on protection of human health and the environment. Our study found that protection of human health and the environment is directly related to the implementation and enforcement of Federal, State and local environmental regulations. This is true irrespective of whether individual States and local governments administer flow control programs.

Last, Congress asked us to identify the impact of flow control on the development of State and local waste managing capacity and on the achievement of State and local goals for source reduction, reuse and recycling. We found that flow control is not essential for the development of new solid waste managing capacity, nor is it es-

essential for achieving State and local goals for source reduction, reuse and recycling.

Flow controls have provided an administratively effective mechanism for local governments to plan for and fund their solid waste management systems. However, other options could also be used.

Evaluation of the composting, recycling, combustion and landfill market segments have indicated that sufficient capacity exists on a national basis to manage the relevant municipal solid waste streams.

Our analysis also showed that flow controls play a limited role in the solid waste market as a whole. Only a small percentage of the waste managed by composting/recycling and landfill market segments is affected by flow controls.

Waste-to-energy facilities, accounting for 31 million tons of municipal solid waste annually, are the segment where flow controls play the largest role. A minimum of 58 percent of waste-to-energy throughput is supported by flow controls. An additional 31 percent of throughput is guaranteed through contractual mechanisms, some of which may be supported by a flow control ordinance.

Flow controls affect approximately 3 percent of the 40 million tons of recyclable materials. Material recovery facilities, MRF's, are the recycling market subsegment that make the most use of flow controls. Flow controls support about 13 percent of MRF's, with 19 percent of total throughput to these facilities, or about a million tons a year. It is important to note that a significant portion, about 32 percent, of waste handled by the high technology material recovery facilities, which do require a substantial capital investment, are supported by flow controls. Also, an additional 44 percent of throughput to these facilities is guaranteed under contractual arrangements, some of which may be supported by flow control.

EPA also found that some jurisdictions use flow controls to support various elements in integrated solid waste management systems. Flow controls are used to support services such as curbside collection for recycling. They're also used to support services and practices that generally do not lend themselves to generation of their own revenues. Examples of these services are household hazardous waste collection, source reduction programs, and public awareness programs. For such cases, the report suggests several alternatives that States and local governments could and in some case do use to support their solid waste management system. These include taxes, uniform user fees, unit-based fees, and market-based tip fees. However, implementation of these alternatives by communities currently relying on flow controls could be politically difficult, potentially disruptive and take some time to implement.

In summary, EPA's report shows that flow controls provide an administratively effective tool for local governments to plan and fund solid waste management systems. However, the Agency found no data showing that jurisdictions having flow control authority provide more protection in terms of human health and the environment than jurisdictions without such authority.

Madam Chairwoman, this concludes my prepared remarks. I'll be happy to respond to any questions following Mr. Glover's remarks. Thank you.

Chairwoman MEYERS. Thank you very much, Mr. Shapiro. Our next witness is well known to the committee. Mr. Jere Glover is Chief Counsel for Advocacy of the Small Business Administration. Mr. Glover?

[Mr. Shapiro's statement may be found in the appendix.]

**TESTIMONY OF JERE GLOVER, CHIEF COUNSEL FOR
ADVOCACY, SMALL BUSINESS ADMINISTRATION**

Mr. GLOVER. Thank you, Madam Chairwoman and members of the committee. It's a privilege to be here today. I'm here today to strongly support the Sierra Club and the National Resources Defense Council's position. I've always wanted to say that even before this committee. This is my first opportunity to do that, and I certainly do not want to forego that opportunity.

The issue before us today is also, of course, supported by the National Association of Manufacturers, National Federation of Independent Business, and the American Trucking Association, and a variety of other organizations. There's some basic principles which we apply to small business and Government, actions and Government regulations. The first and probably the most important of those is, full and open competition is always better for small business. Yes, that does apply to Government procurement as well. The second is, monopolies are virtually never beneficial to small businesses. Third, economic regulations that impose burdens on small business should be eliminated whenever possible; especially economic regulations that impose regulatory cost on taxpayers and small business without at least having some significant environmental benefit. They simply should not exist.

Flow control imposes, according to one study, between 20 and 40 percent monopoly surcharges on small businesses for their solid waste disposal. It inhibits the growth and development of innovative and new technologies that could and often have brought down the costs, especially in this area. Recognizing that some plants have already been built with State and local bonds, I believe that there needs to be a very limited and narrow exemption carved out for those bonds to cover those exceptions where things have already been in place rather than renegotiating those. But these should be very limited.

With me today is Kevin Bromberg of the Office of Advocacy. He's an environmental advocate, and he will be happy to help you answer any questions that you may have on this. I think it's an important issue. I'm happy the committee is taking this up. I'd be happy to answer questions.

[Mr. Glover's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much for being here, Mr. Glover. Now, if you will all stay at the table now, we will start our first round of questioning. I will ask the ranking member, Mr. LaFalce, to lead off with the questions.

Mr. LAFALCE. Thank you very much, Madam Chair. This is a very complex issue, but before we get into the complexities of it, let me understand where the bodies are. Who's for what? We're talking about small businesses. Are all small businesses speaking from the same side of the table? Do we have some from the other side.

Jere, you talked about the environmental groups now. Are they all on one side or are they split on this? What about the big waste companies, the BFI's, the Waste Managements, et cetera? Where are they coming from on this issue? We've got the municipalities. Are all the municipalities speaking with one voice or are they split up depending on whether they're a big city or a small city? Or are they split up depending on whether or not they have some municipally-owned enterprise or not?

I know the Public Securities Association is interested in this too, probably because some municipalities have floated some bonds, et cetera. Where is the administration on this?

Chairwoman MEYERS. Very good question. Would you like each to answer or are you directing it.

Mr. LAFALCE. Let's say at the very least, Mr. Glover and Mr. McKeon, and if any of the others wish to jump in, fine.

Mr. GLOVER. I think, first of all, my understanding is the primary trade association, which used to be called the Waste Management Association, which is now the Environmental Services Association, is supportive of eliminating flow control.

Chairwoman MEYERS. Excuse me? Say that again?

Mr. GLOVER. The major industry trade association is in favor of eliminating flow control requirements.

Mr. LAFALCE. When you're saying under industry trade association, who belongs to that.

Mr. GLOVER. It actually represents both large and small environmental service companies, basically companies involved in solid waste disposal, what we refer to as trash companies, both those that own the landfills and those that are primarily involved in hauling. It's a pretty broad-based association.

Mr. LAFALCE. Are you saying that these big companies, such as BFI, Waste Management, et cetera are opposed to flow control?

Mr. GLOVER. The association that represents them. I don't know about specific companies, but the association that primarily represents them has taken that position of opposition. As far as small businesses are concerned, the vast majority of small businesses would be opposed to flow control. There may well be a few that are monopolies that have a situation—or have a situation where one or two companies might control all waste outlets in their community that might be opposed to it. But by and large, most small businesses would oppose flow control engaged in this industry.

As far as the administration's position, I'll let EPA answer that question, but I don't believe that they've taken a specific position on the legislation. So, I don't have a survey of all the industries involved, but those that we've talked with—and we've talked with a variety of them, the small businesses—we found them to be supportive of eliminating flow control.

Mr. LAFALCE. I'm a bit confused because you're telling me the major trade association, big business and small business is opposed to flow control. I have letters from—1994—from the New York State Council of Mayors and Municipal Officials saying they're opposed to flow control too. You cited some environmental groups opposed to flow control. Yet it seems imperative that we pass some flow control legislation.

Who's for flow control legislation? Whoever's for flow control legislation, does it simply deal with the conditions that exist and therefore, make it applicable only to existing facilities? Or is it prospective in nature? And who is for prospective legislation?

Anybody for prospective flow control legislation? I don't mean at the table, but do you know of anybody who's for legislatively sanctioned authority to the States or to State subdivisions permitting flow control prospectively? Is there anybody for that.

Mr. GLOVER. It passed the Senate, so we have to presume that there are some people for it.

Mr. LAFALCE. Then who is, if it did pass the Senate? Because people who are for it, where are the bodies? Let's uncover it.

Mr. GLOVER. Let me give you a brief history as I understand the situation. Certainly there are people here who are probably more qualified than me on that subject. When flow control was initially enacted, it was deemed that it was necessary to do that to get people to get involved in incineration plans, waste management plans, trying to control recycling and to encourage recycling.

There are a lot of things that happened when the legislation was first enacted. As technology has improved, as we have seen, some of those plans that were originally created the need for flow control has diminished as people became more sensitive to the environmental management.

Chairwoman MEYERS. Jere.

Mr. GLOVER. Yes.

Chairwoman MEYERS. Would you say that generally—if the gentleman were to yield—would you say generally it's local government officials that support, but not uniformly, I don't think.

Mr. GLOVER. I think some local government officials think it's a good way that they can perhaps indirectly tax some situations and receive some benefits through controlling garbage and the way it's handled and the way it's managed. It's certainly no longer the majority of anybody supporting it. There's a historical pattern, and some people are using this opportunity to continue that. What was a good idea perhaps 20 years ago has perhaps outlived its usefulness.

Chairwoman MEYERS. Then I presume that—if the gentleman will further yield—that Ms. Dunson's concern about a monopoly being formed if one large company is able to get control so that—you can speak to that, Ms. Dunson.

Ms. DUNSON. No disrespect intended, but I disagree with the gentleman's position. The company I represent, Santek Environmental is a member of the trade organizations that were spoken of today. The haulers that I spoke of today in my testimony are members of this trade organization.

Last year in North Carolina, with regards to the support of local government for flow control, over a hundred local resolutions were passed by local governments there asking, pleading, begging Congress for flow control legislation. So, I think that across the board, with the contacts that we have—and we have a very broad database—the percentage of local governments supporting local flow control far outweighed those that don't support it.

There is a silent majority of independent haulers out there who are not being represented by the trade organization even though

they do constitute the majority of the trade organization's membership. They're not, like I said, they're a silent majority. They're not here with me today, but I can give you direct instances of independent haulers who do support flow control legislation because they can see the forest through the trees.

Mr. LAFALCE. You support it?

Ms. DUNSON. Yes.

Chairwoman MEYERS. Well, the light is red, and we have—

Mr. LAFALCE. You want it prospectively too?

Ms. DUNSON. Can you clarify what you mean by that.

Mr. LAFALCE. By prospectively, I mean, would you support the future exercise—

Ms. DUNSON. Yeah.

Mr. LAFALCE [continuing]. of authority as opposed to simply saying if you've already acted and built the facilities, then it's OK. You support it prospectively?

Ms. DUNSON. Yes, because there are a lot of local governments out there who have planned for the future but have not yet taken action. The lack of flow control prospectively for the future is going to definitely penalize these local governments and their solid waste plans.

Chairwoman MEYERS. Mr. Bartlett.

Mr. BARTLETT. Thank you very much. About a year ago I had the privilege of visiting a very young company, both in terms of his age and the age of its owner—he was in his early 20's—in Carroll County, Maryland. He asked his parents, "Please give me the money that you put aside for my college education. I want to start a business." It was a trash hauling business.

One of you mentioned innovativeness and creativity. What he did was to go to his customers and tell them, "I will put several dumpsters at your property. If you will sort your things; aluminum, metals, cardboard, paper, rags, and so forth, I won't charge you anything for removing it because I can sell it. If you don't sort it right then there will be a penalty if I have to hire people to sort it." So, here is someone who independently is doing, really, flow control. He is recycling these things.

Another experience in Washington County. There was a commercial operation that wanted to come into Washington County. They were going to take trash. I saw the floor they prepared, an enormous building where they were going to dump the trash. Then they were going to sort it. They took those parts that were to be recycled. The rest of those would be rebundled and taken off to landfills. There was a backlash from the local people; not-in-my-backyard kind of attitude.

Yet at the same time, we have communities that are doing exactly that without competitiveness. They have flow control. They're edicting to their people who we're going to take your trash, we're going to sort it, we're going to charge you higher fees than you've been charged in the past because it costs us more to take this and sort it out than it did just to take it and dump it in the landfill.

My question is, what can we do to make it easier for these commercial people, for the innovators to come in to do the kinds of things in a competitive environment that many of our local communities are doing anyhow. I think that it's just a truism all through

America, all through the world, that when you have Government doing it, it's not going to be done as efficiently, it's not going to be done as effectively as if it's done in a competitive environment.

What can we do to change the environment out there so that people are not going to have this nippy attitude; not in my backyard. But when they see a commercial person coming in who is willing to do the same thing they would be required to do through their Government, but it's going to be done cheaper and more efficiently and it's going to be done competitively.

How can we change that attitude so that we can get the commercial people involved here? To bring what always happens with competition; the quality goes up and the price comes down? That almost never ever happens when Government is doing it. How can we change the atmosphere so we can get the job that we need to do done, that we can get it done competitively, without requiring Government to do it.

Mr. GLOVER. I think the flow control issue before us today is a clear example, the first example where a small entrepreneur comes in and wants to start a new business. That would not be permitted if flow control was required because he would have to deliver those things to the site that was designated under the flow control monopoly. I think that we have a specific example here.

Clearly, flow control stifles innovation, it stifles creativity, it stifles new ways of doing business because it has to be delivered to one particular location. I think that's the exact piece of legislation that's pending today. You're right. Monopolies is one of the basic premises of the Office of Advocacy.

My belief is that monopolies virtually never are to the benefit of small business. There may be rare exceptions, but if those exceptions exist, there are three or four other classes of small business that are hurt because they can't compete and can't grow. Today's monopoly small business becomes a large monopoly and excludes small firms. So, this is a classic example of where we can do something about that. Without flow control, we will encourage creative new ideas in those markets.

Chairwoman MEYERS. Would any other panel member care to comment on the question.

Ms. DUNSON. Yes, I would. I'd like to point to a direct instance in Winston-Salem, North Carolina where, because of the lack of flow control in that local community, the local government resorted to having to issue franchise licenses to haulers that wanted compete for business because the county was in jeopardy of losing a majority of its waste stream to a large waste conglomerate who had anticipated hauling that waste out of county.

I can in fact cite you the name of the company that was wanting to recycle, to go into the recycling business, but because it had to wait on a franchise license, couldn't. So, there's another side of the story to not having flow control and for entrepreneurs wanting to get into the business that don't have any legal mechanisms in place to direct waste to a certain facility.

Mr. BARTLETT. I don't understand. The problem the community had—they had flow control.

Ms. DUNSON. No, they didn't have flow control. Because they were in jeopardy of losing a majority of their waste stream to a

large waste conglomerate who wanted to haul or intended to haul the waste out of county to its own private landfill, they went ahead and issued franchise licenses that gave each hauler the legal right to do business in that community.

But if that franchise license—if they hadn't been issued, the small independent haulers who wanted to do business, who wanted to start recycling services in that community, couldn't have competed because the large waste conglomerate had most of the volume on its trucks.

Mr. BARTLETT. Were they doing it cheaper.

Ms. DUNSON. Yes.

Mr. BARTLETT. Hauling it out of county.

Ms. DUNSON. No, the large waste conglomerate was not doing it cheaper, but the small independent could have done it cheaper if allowed the ability to compete.

Mr. BARTLETT. Wouldn't that have been the right solution? Let the small independent competitor compete with the big conglomerate if he could do it cheaper? I don't understand still why the need for flow control. It seems to me you would have had what you wanted.

Ms. DUNSON. Because if the local government could have directed all of the waste to its facility, everybody could have competed on a level playing field. But because the large conglomerate owned a majority of the waste and was offering discount tipping fees to take it to its facility, the small entrepreneur couldn't compete. He wasn't getting the discount rates.

Mr. BARTLETT. I thought you said that the big conglomerate charged more.

Ms. DUNSON. I'm sorry, I misunderstood your question. I meant to say that the small independent was not able to compete with the large waste conglomerate.

Mr. BARTLETT. I'm not sure I understand the problem, but I still have to go back to a basic premise, and that is, wherever you can have competition—and you can't have that obviously in the military, but you can have it other places, most everywhere else. Wherever you have competition, you're going to do two things: Quality is going to go up and price is going to come down.

Ms. DUNSON. There was no competition in Winston-Salem, North Carolina because the majority of the waste stream was being hauled out of county and was being assessed discount tipping fees by the large waste conglomerate. J&S Dumpster Service didn't get a chance to compete because it wasn't being offered discount tipping fees. It had to pay the going rate. It had to pass along the increased cost to its customers.

Mr. BARTLETT. But you still had a competitive environment.

Ms. DUNSON. For one company.

Mr. BARTLETT. Thank you very much.

Chairwoman MEYERS. I think Mr. McKeon wanted to comment on that, if you could do that.

Mr. MCKEON. Just very quickly. To me, flow control is not a real complicated issue. I'm the guy at the end of the stream, so to speak, but it's really the beginning of the stream. I'm the guy that's writing the check for all this. We talk about protecting somebody because they can't compete with a large hauler.

I don't care the size of the hauler. If somebody walks into my office and said, I can pick your trash up and I can take it away for X amount of dollars a ton or X amount of dollars a load and it's going to be done legally, and it's going to be done right, I've got to consider that in my business.

In my business, our margins are pennies. Every dollar makes a difference. So, to protect somebody who cannot operate as efficiently, that doesn't make any sense to me. If a person can't do it, then they're out of business. In my business, if I can't compete, if I can't sell my product to my customer at a fair price and get them to come into my stores and I can't compete, then I don't belong in the business. I've got to get out.

I can't ask Government to protect me to ensure my profits. Just let me choose what's right for me within the purveyance of the laws of the court. But I don't understand all this we have to protect this person or protect this person from somebody big. Just because somebody's big doesn't necessarily make it bad. But I don't necessarily look at it from that standpoint. I've got to look at it from the bottom line.

Chairwoman MEYERS. Thank you, Mr. McKeon. Our next questioner is Ms. Clayton.

Ms. CLAYTON. Thank you, Madam Chair. One of the—of course, this is an issue that involves a lot of interest, and trying to find and sort out the interests of the various entities, it's difficult. One was, indeed, and my background is I come from a local government. One of the overriding purposes for this—and I respect Mr. Glover's observation that this might have been appropriate at one point, but no longer an effective tool.

One of the reasons why this is considered, that it was an instrument for local government so that one could plan local government to have the authority to plan, just as local government has the opportunity for planning where housing and where streets and roads are and where schools are, it's in that purview of that that the local government should have the authority.

So, the question is, what is the appropriate authority? Not that local governments should have a right to say where landfills are. The other one was the purpose for trying to devise an instrument by which we would control our environment process. Again, rather, we were having—earlier in this stage we thought burning was the correct way to do it. Now we're a little more involved and we know, as Mr. Muchnick has indicated—and I appreciate his observations—that perhaps that is passe and therefore we need to consider other kinds of options.

I'm also struck by the fact, the realization that in the 1994 Supreme Court, flow control was interpreted as a violation of the Commerce Clause. So, given those kind of synergies, it seems to me that if there were valid reasons for having this in the very beginning, and local governments needed to have, in my judgment, as other governments need to have, some rational way for planning for the infrastructure of their localities, and landfills and waste are viable instruments or facilities they need to plan for.

If they are incurring the expense, there has to be a way of making sure this is cost effective. One said tipping fees. I know no one likes putting taxes on, but we've had to do that. So, once they

began to look at the businesses—and I'm struck by Mr. McKeon's observations that he has to look at the bottom line.

Also, Government should be looking at the bottom line. So, the question it seems to me is, if we are giving validity to the reasons why we had this in the beginning and we need to change it and we need to be consistent that we don't restrain good commerce, how then should we proceed? What then are the alternatives if we indeed want to move from a rational way where we can have both free enterprise and commerce, and at the same time, some rational way.

It seems we are now being asked by an act of Congress to try to resolve these competing interests. Apparently, as the ranking member's indicated, it shows some support for this or the Senate wouldn't have passed it. Now, it puts the pulse on somebody's arm to—somebody's pulse to find out indeed how things are moving.

So, I would like for anyone on the panel to suggest what then, other than to do away with flow control altogether, is there other rational alternatives that we ought to be looking at that makes sense from a Government stand? I gather someone from the Government next time will speak to this, so, I gather no one on this panel—

But from a business stand, is there anything you would suggest that would make—Mr. Muchnick, starting with you. You make the assumption that most of those that have flow controls are the ones that are burning incinerators.

Mr. MUCHNICK. No, I assume that they're spread between incinerators, landfills, and material recovery facilities. I don't make a presumption that they are—

Ms. CLAYTON. Would you help us out and give us rational alternatives?

Mr. MUCHNICK. Yes. I'd like to put it slightly in a historical context. I think that flow control really arose as a means to finance large-scale facilities when investment bankers' bond counsels wanted to assure that there would be a continuous flow and supply of materials to assure that the facilities would be able to be self-sustaining. The debt service on the bonds would be paid.

Ms. CLAYTON. Is there no need for that?

Mr. MUCHNICK. Well, there's probably a need for that from the point of view of issuing and selling bonds. But, there's probably not a need for those large-scale facilities, given the change in public behavior, both on the private side and on the residential side and on the commercial side, that has seen a growth in recycling that was not predicted in the early '80's.

In the last 10 or 15 years we've seen a phenomenal growth both in recycling activity by individuals and businesses and also in the investment in new manufacturing capacity using recycled material by the larger corporations around the world. That has developed a tremendous need for recyclable materials by those corporations.

The demand for recyclable materials now exceeds available supply, and the potential supply of those materials ought not to be going into incinerators, landfills and low value MRF's, when in fact it ought to be going into the manufacturing capacity.

Now, how do you address that going forward? I think, number one, to the extent that one were to need incinerators, landfills and

MRF's, they ought to be sized smaller, based on the fact that the materials are going to go out of the waste stream and to higher and better uses. I would suggest to this committee that the investment policies and business support programs and policies it looks at ought to be those which encourage small businesses to source separate and sell their recyclables and which assist new and existing manufacturers to use recycled materials to make new products. The policies can develop both supply and demand mechanisms to continue to maintain market demand for those pulling recyclables out of the waste stream and reduce small businesses' waste disposal costs. I think that's the direction that policy in this committee ought to go.

Chairwoman MEYERS. Thank you, Mr. Muchnick.

Ms. CLAYTON. I just wanted to respond to the comment.

Chairwoman MEYERS. I think the light is red and because we have so many Members here, thank you very much. Mr. Torkildsen.

Mr. TORKILDSEN. Thinking about my home State of Massachusetts, a question comes to mind. Any suggestions for those communities that invested time and money in the interest of controlling their flow of solid waste if the Supreme Court decision is in effect?

Chairwoman MEYERS. Mr. Shapiro.

Mr. SHAPIRO. I just wanted to clarify a point from our report. There are other mechanisms that these communities can and have used to control where their wastes go. I realize that some of these may run afoul of the same objections that members of the panel have to flow control, but there are legal mechanisms even in light of the Supreme Court decision that communities can and do use. One is that communities can operate their own collection services and can take the waste where they want. Other municipalities use franchise arrangements where private firms compete for waste hauling franchise but part of the franchise arrangement is that the firm awarded the franchise must carry waste to a particular facility.

So, those are alternatives. There are contracting alternatives, also. These alternatives are, in my understanding, still legal in terms of the Supreme Court decision and are being used. While these administrative alternatives are in some cases more complex than flow control, they are certainly worth while for consideration by communities that are already using flow control and have built a system around that. Any transition would be quite difficult for them to make and we do have certainly a transition issue at minimum for these communities.

Chairwoman MEYERS. Thank you. Mr. McKeon.

Mr. MCKEON. Thank you. I think basically—if I understand the question correctly, is, what are we going to do with these county-owned facilities that have already been built and are already in place? Why not just contract those out? I don't have a problem as a user if the county's still in the business. Just let me be competitive. As long as they're not the only game in town setting the rates, I don't have a problem with that.

I mean, I talked in my testimony about one county. Every piece of trash that is picked up in that county has to go to their transfer station. They don't do any recycling. They don't do anything with

it other than put it in another truck and haul it to a privately owned landfill. I can do that. My haulers can do that. That's crazy. I don't understand that. But if they're going to do something, let them be competitive. If they can't be competitive, maybe they can contract it out to privatize the facility. I'm not sure I have all the answers to that, but there's got to be another way. We have to protect against inefficiencies.

Chairwoman MEYERS. If the gentleman will yield.

Mr. TORKILDSEN. I'll yield.

Chairwoman MEYERS. Mr. Broadway made a comment in his opening remarks about a strictly limited grandfather clause. I wonder if you would elaborate on that?

Mr. BROADWAY. Yes, I think that we do recognize that there can be situations in which a community has made a significant investment in a particular facility and that perhaps they should be allowed to use that through the reasonable life of the facility, but not to extend it on for decades and decades. But we recognize that there are cases where a community has perhaps used a significant amount of tax dollars to build a facility.

Mr. TORKILDSEN. Thank you, Madam Chair.

Chairwoman MEYERS. Thank you. Our next questioner will be Mr. Baldacci.

Mr. BALDACC. Thank you very much, Madam Chair. I just wanted to get a basic understanding here of—EPA had told local communities to curtail landfills, generally speaking; that they were looking to—they were being told by environmental organization officials to curtail landfills. At the same time as communities were trying to grapple with that, they had to develop financing to build facilities to do the recycling that was required.

Those communities developed waste-to-energy facilities, and because of PURVA laws, they were allowed to be able to sell that power to generators under the purview of both either at the State level or the Federal level. They were able to defray their expenses and some of the costs, OK?

Now all of a sudden, everyone's saying all bets are off. In those communities that have invested that, because they were told by environmental organizations at the State and Federal level that, no more landfills or you're not going to be able to have as much of a landfill as you had, you better make other options, were forced to make that decision at the local level.

Businesses pay the property taxes and personal property taxes, assessments from those local communities, as you do with sewer and water improvements; when the Federal Government used to finance a hundred percent of them, now they don't finance any percent of them. We do it all at the local level.

Then we have the Federal law, which allowed for the sale of that power that was used to be able to help defray that cost. That's my understanding as to what's happened in Maine. That's what we were responding to within Maine. Then the Federal Supreme Court ruled that you can't control interstate commerce. All of a sudden, the communities didn't control the flow, which controlled the generation of power. It's a power source.

They did not have that guaranteed source, which would have impinged their contract with the power companies to generate a par-

ticular level based on the PURVA contracts. It's sort of like one thing leaning on top of another on top of another. I share your frustration with paying the bills at the bottom line, because we also run a little business. That's what usually happens, is at the bottom line.

In our community, what they're starting to do is look at privatizing pickup. They're looking at contracting different aspects out. I've got an advisory group that's working with the local communities to make sure it's as efficiently run as possible. If they don't have that going at it, I agree with you, you're paying for inefficiency.

So, you try and make the best of the situation. The best of the situation is to try to squeeze as much efficiency out of it as possible. But don't deny the flow based on the generation and the contracts that they have because then what we're going to end up doing is paying for both again. We'll end up paying higher property taxes, higher personal property taxes, and at the same time, there will be a big unsettlement within the communities.

That's my brief experience with flow control and what happened in our State. We have a situation where we have those agreements throughout 160 communities. But it's not just flow control. It's sort of compounded with PURVA and those power agreements. It's not just a feel-good thing that the bond houses are requiring because of determining the load. But in fact, with those power contracts that they have, they really do need that power generation that they're obligated for.

So, it's sort of one thing falls on top of other. I do support flow control, but I think I support it responsibly, so that we do have the constraints and it's not open ended. I think we need to at the same time allowing these things to continue on but have to be continued on in a very responsible fashion, as the chair has suggested, maybe in some restricted fashion. But there is going to need to be some continuation of this, because a lot of communities are just responding to what they were told by the Federal Government or the State government and all of a sudden now that things have changed and all of a sudden there's money in trash, they're sort of left by the wayside.

That really is what's happened very objectively today in my situation. So, it's not really a question, it's just from a local community, having been at a local community level for a few years, it sort of like all filters down to that level. That's the way the rubber hits the road. Thank you very much, Madam Chair.

Chairwoman MEYERS. Thank you very much for your comments, Mr. Baldacci. Our next questioner is Ms. Kelly from New York.

Ms. KELLY. Thank you, Madam Chairman. I just love the fact that you're willing to have this hearing this morning and I also love the fact that we're sitting here talking in very politically correct terms about what Mr. Glover quite appropriately called, my generation called it garbage. Isn't it wonderful that it's worth something.

Mr. GLOVER. It certainly is.

Ms. KELLY. I commend you for having these hearings. I want to back up Mr. Baldacci's comments in my area. I represent a waste-to-energy plant as well as a county that has built a MRF facility,

and these buildings have been built with tax monies, and that has to be paid for one way or another.

I just have a couple of questions that I'd like to ask. One, Mr. Shapiro, about the EPA. Do you view the level of involvement in a local government to be appropriate here? I mean, is this something that the EPA would view as an appropriate thing for the Federal Government to be involved in—the local government, I'm sorry.

Mr. SHAPIRO. I'm not sure I fully understand your question. If the question is, is planning and management for municipal solid waste services an appropriate role for local government, we certainly believe that that is the primary level of Government that should be dealing with those issues. We also recognize that in many parts of the country, regional solutions to municipal solid waste management problems make a lot of sense and therefore collaborative efforts is needed supported by a number of governments in order to plan good solutions. But certainly the municipal level is an appropriate level for planning and management of the services.

Ms. KELLY. If I understand you correctly, it's the EPA's stance that the charging of user fees is appropriate at the local level?

Mr. SHAPIRO. That's correct. It's one appropriate way of raising revenue to support the services, I think is probably the accurate summary.

Ms. KELLY. I want to jump to—I'm going fast because I know we have a lot of people here. I want to go to Mr. Broadway. Your very highly specific grandfather clause—would that allow these, the municipalities and local governments who have gone out and floated the bond issues to build these facilities, would that allow them to continue paying out those obligations? That grandfather clause would allow them to have flow control until they get those bonds paid off and that would then allow them to go into a fully free market system and bid like everyone else? Is that what you have in mind.

Mr. BROADWAY. I think that's what we would support. If they have already gone into debt or are paying off the bonds, then obviously the facility's there and some use has to be made of it, and the taxpayers in that municipality are responsible for the ultimate cost of that.

Ms. KELLY. One way or another they have to pay it; either they pay it through taxing or for the fees on the trash pickup or they pay it in taxes. So, you would grandfather them in until they're completely protected with those obligations paid up; is that correct?

Mr. BROADWAY. Until the facility has run its business life span. But we certainly—I think I would object to the implementation of new facilities of grandfathering localities, say, that already have facilities, from building new ones in the future.

Mr. GLOVER. Our position is similar to that, but we simply limit it until the bonds are paid off, in the theory that when bonds are paid off, in all likelihood, the usable life of the facility would have expired by then.

Ms. KELLY. But if we can negotiate one or the other, that would be acceptable to both of you; is that correct.

Mr. GLOVER. Yes, ma'am.

Ms. KELLY. Ms. Dunson, tell me why you think that flow control is pro-competitive and why you think it's a consistent position for free marketers to be in?

Ms. DUNSON. Well, in my testimony, I compared the issue of flow control to the turn of the century and the railroad companies. Our industry is fast becoming monopolized or oligopolized by several large waste conglomerates that own landfills. There is a synergy around a landfill with regards to hauling.

If those large waste conglomerates can control the landfill or the disposal facility and feeds that facility with waste on its trucks, it makes it very, very hard for either local government or independent haulers to compete due to the fact that the large waste conglomerate typically assesses a discount fee to its trucks.

We can point to instances across the country where this is happening. I tried to point to some in my testimony today. Flow control—I'm not saying it's a perfect mechanism to redistribute this flow of waste, but unless something is done to protect local governments' infrastructure and also independent haulers, who in turn will protect small business owners, we run the risk of possibly coming under the Public Service Commission. This industry is becoming monopolized. You're not going to hear that, nobody wants to talk about it, but it's true.

Ms. KELLY. Thank you very much. Madam Chairman, I'd like a prepared statement entered into the record.

Chairwoman MEYERS. Thank you. Without objection, that will be done, Ms. Kelly.

[Mr. Kelly's statement may be found in the appendix.]

Our next questioner is Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Madam Chair. I just want to thank you for holding this important hearing.

Mr. Shapiro, as a representative of the community of haulers, I have a large concern about environmental justice and the fact that the community of color has been used as dumping grounds in this Nation. In fact, I have introduced legislation calling for environmental justice, and I would like to know your view in your opinion why there is such a pattern that—if you feel that flow control has made it easier to use our low income and minority communities as dumping grounds for waste?

Mr. SHAPIRO. Well, let me say first of all, we certainly share your concerns about environmental justice. With respect to flow control issues specifically, in our review—and we did not focus specifically on the environmental justice issue—but in our review, we didn't see any strong basis to believe that flow control would influence the location of facilities in that way.

There are many issues that govern decisions to locate facilities. They're frequently very controversial decisions, as you all know. We did not identify flow control as being a key determinant of where a facility is located.

Ms. VELÁZQUEZ. What effect do you see municipal flow control having—an increased reliance in many communities on incinerators?

Mr. SHAPIRO. What we do know right now is that a large number of incinerators are supported by flow control requirements of one sort or another. We did not project into the future whether the ab-

sence of flow control would impact the development of the facilities of the future. For a variety of reasons, there seems to be less—a smaller number of new incinerator units being planned right now than there were a few years ago. Again, we did not try to forecast what the impacts of loss of flow control would be on these kinds of facilities.

Ms. VELÁZQUEZ. Why does flow control play such a large role in the waste management market.

Mr. SHAPIRO. There are a number of reasons, some of which have been mentioned earlier. These facilities, because they require very substantial initial investments, have to be financed through the bond markets. One of the factors influencing the availability of financing and the rates associated with the financing is the prospect of a more or less guaranteed revenue stream.

Since the waste coming to the facility is the revenue stream that is supporting payment of the bonds, the flow control approach has been one approach that was administratively attractive to many communities, to provide that level of assurance to the financing community. So, that's one important reason, I think, why flow control and very capital intensive facilities, like waste-to-energy plants, are limited.

Ms. VELÁZQUEZ. So, would you say that flow control and quality have been used as a financial mechanism for incinerators, for example.

Mr. SHAPIRO. Yes, it very clearly has been used as a way of supporting the financing of those facilities.

Ms. VELÁZQUEZ. Thank you, Madam Chair.

Chairwoman MEYERS. Thank you, Ms. Velázquez. Mr. Wamp.

Mr. WAMP. Thank you, Madam Chairwoman. Much like my colleague from Maryland, Mr. Bartlett, I still have some ideological problems with flow control, but I want to point a couple of things out, because I am the villain who invited Ms. Cheryl Dunson to come to Washington to testify today because I do believe it's important that we have a balanced presentation and we hear opposing views before these hearings so that when people say, did we have a fair hearing on these issues, we can say, yes, we had a fair hearing on this issue.

I commend Ms. Dunson for her work in this area even though I may not agree ultimately with everything that she believes. I do commend Kenny Higgins, who is her boss, who happens to be in the room today as well, for the work that they've done in the private sector. Santek is a leader regionally, based in my district, and I'm very proud of them.

But also I want to say this: I did not sign up to serve on the big business committee, I signed up to serve on the Small Business Committee. While we should promote competition, this committee particularly here, I believe, is an advocacy group for small business interests. So, when we ask the question, why are we worried about who's doing the services as long as we can get the price that cheap, let's keep in mind that we could also live in a Nation with four or five companies in every single industry and small guys don't have a chance. I really think those trends need to be monitored right here in Washington, DC, and that's one reason why I thought it

only fair that those who promote flow control come and have their opportunity to testify.

Then I guess in closing up this matter, or close to it—maybe Mr. Luther has yet to ask questions. But I did want to ask Ms. Dunson if there were other issues that have been raised by those that have testified in opposition to flow control today that she would like to respond to, just so we do continue to have some balance to this discussion.

Ms. DUNSON. Just two things that I'd like to say. First, we've been talking about the EPA mandates that they place upon local governments to reduce—sort, separate and to reduce our need or reliance on landfills. Unfortunately, the same mandates have not been placed on large waste conglomerates. So, there is a disparity there. There is not a level playing field.

Second of all, the lady, Ms. Clayton, she asked what probably would be a solution other than flow control. We believe very much so in the competitive procurement process of services from the private industries. But for those services to be adequately procured and to be implemented in a local government situation, we believe that local government must maintain some control over their disposal destiny, otherwise we run the risk of turning this entire industry into the oligopoly that I talked about earlier.

Mr. WAMP. One final question for you. I am a big supporter of the National Federation of Independent Businesses. Quite honestly, I think they're one of the most effective trade organizations in this country. So, do you just respectfully disagree slightly with them on this issue.

Ms. DUNSON. We're members of NFIB and I've written to them on several occasions to rethink their position. I guess you could say that we do agree to disagree. We have, in their letters to me, have stated that if this is an antitrust issue, that they would be willing to revisit this issue under those auspices. So, yes, I guess we do agree to disagree on this issue.

Mr. WAMP. Thank you, Madam Chairman.

Chairwoman MEYERS. Did you wish to respond to that.

Mr. GLOVER. I was going to comment on the antitrust issue. To the extent there are antitrust problems, we're trying to work with the Federal Trade Commission and the Department of Justice to make sure they do a better job of looking at companies where there's restricted trade. This is an area that I hadn't thought about before, but that is certainly a viable option, go to the Federal Trade Commission and see what they're doing in this area.

Chairwoman MEYERS. Mr. Shapiro.

Mr. SHAPIRO. Just a point of clarification. As far as I know, the Federal EPA does not impose any recycling, source reduction mandates on small or large municipal waste facilities. There are State requirements, and you may be appropriate to comment on those. But from a Federal perspective, we don't get involved in that particular issue.

Chairwoman MEYERS. Mr. Broadway.

Mr. BROADWAY. Yes, I would only comment that certainly, small business is not a monolithic entity and I think we have an indication here that there are different points of view. But I'm com-

fortable in saying that I think that we are representing a majority of our members' point of view on this particular issue.

Chairwoman MEYERS. Thank you very much. Mr. Luther?

Mr. LUTHER. Thank you, Madam Chair. Again, thank you for the hearing. I think this is an excellent idea. I think it really gives us an opportunity to see the various points of view on an issue of major concern. Commissioner Randy Johnson from Minnesota will, on the next panel, will give us, I think, a good overview of what Minnesota has done on this and our struggles in this area. So, I would welcome all of you to listen to his comments. He's been very involved in Minnesota.

But in respect to time, the only question I would ask and request really—I don't know that we have to deal any more with it here, but I think any suggestions that can be given us as to how to create this competitive environment and opportunities for small business, particularly as we move into this. I think it was Mr. Muchnick that mentioned this whole changing environment we're in now where we need to be focusing on—ought to be focusing on reuse.

I think that if I understood your comments, you were saying we're in a changed environment today from where we were 5 or 10 years ago. As we look ahead, what should we be doing to create those opportunities for small business to be competing and create the right competitive environment so we truly get the competition we're looking for, yet give local governments the tools that they need to create that environment and also advance that public policy of using this waste in the best possible way for society.

It seems to me that's our challenge. Any suggestions for those of you who are on the front line out there, any suggestions you can give us in the structuring of this legislation, I think are going to be very welcomed by committee members.

Mr. MUCHNICK. Madam Chairwoman, may I respond to that.

Chairwoman MEYERS. Yes.

Mr. MUCHNICK. The Empire State Center for Recycling Enterprises would be happy to provide this committee with a broad list of ideas and some strategic concepts of how to do that. I think the only thing I would add that is directly in point of this hearing is, to the extent that the committee is considering exemptions or grandfathering exemptions on flow control issues, I would strongly urge that there be a specific exemption from flow control for recyclable materials that are source separated by a generator and intended for resale and reuse.

It frankly makes no sense to bury or burn or not process very well plastic that's worth \$600 a ton and turn it into \$25 a ton fuel stock or for a power plant. There are other illustrations of that. This specific exemption would also save small businesses the headaches having to contest in a lawsuit whether or not they can source-separate and market their recyclables. And, it would give them the opportunity to save significant amounts on their waste disposal costs.

Chairwoman MEYERS. Thank you, Mr. Muchnick, and thank you for that good question, Mr. Luther, because any of you who have any thoughts as you go home and say, "I wish I had said that," feel free to communicate with the committee because we would like to

hear any ideas or suggestions that you have. My thanks to both panels. You've been just excellent. Mr. LaFalce.

Mr. LAFALCE. I wonder, Madam Chair, if I could ask one or two more questions of Ms. Dunson? Ms. Dunson, you mentioned several times the developing cartel oligopoly, et cetera, that has begun to exist in the area of treatment of waste. Would you expand upon that a bit? I am concerned about that, not only for the present situation, but for the future. Could you discuss trends? Is there any study of this? Has much been written about this? Do you know if any Governmental agency, FTC or Justice any other—or EPA has looked at this at all?

Ms. DUNSON. The only thing I can point you to as far as research and development is to pick up a trade publication called Waste Stage, which is put out by the—what was formerly the National Solid Waste Management Association of America, which is now the Environmental Industry Association. This trade organization typically profiles very up-and-coming waste conglomerates in the Nation.

If you read about their business strategy around about what their intent is as far as their long-term goals, it's to take small independents out of the business, to buy small independent companies, to purchase landfills around where these companies have been purchased, and to feed these landfills with waste on their trucks. The study that I referred to earlier in my testimony, which came directly from EPA's Municipal Solid Waste Fact Book, states that 66 percent of the Nation's major landfills are owned and controlled by one of seven large waste conglomerates.

Mr. LAFALCE. Sixty percent?

Ms. DUNSON. Sixty-six percent.

Mr. LAFALCE. Sixty-six percent owned or controlled by one of seven. Of course, you don't have a choice of one in seven in a given locality. In a given locality, you might not have seven, you might not have six, you might not have two. You might have one. So, you have de facto monopolies in geographic areas.

Ms. DUNSON. Correct.

Mr. LAFALCE. So, an oligopoly exists. You could have a regional oligopoly or a monopoly.

Ms. DUNSON. Yes.

Mr. LAFALCE. Did I read something recently in Florida? Is there an individual who has a strategy along the lines you're talking about? Have you seen that?

Ms. DUNSON. Highzinga.

Mr. LAFALCE. Highzinga. Tell me about that. Did a lot of small little companies' stocks that were listed just shoot up 100 to 200 percent because of anticipation of takeovers or something?

Ms. DUNSON. All I can say as far as the situation in Florida, just through the trade publications that come across my desk and being in the waste industry, is that this individual recently purchased a predominantly large waste conglomerate and has intentions of building it and growing it to be similar in size, I guess you could say, to one that he started several years ago that he eventually sold.

Mr. LAFALCE. He sold to whom.

Ms. DUNSON. I don't know who he sold to, but it's probably the largest waste management company in the world right now, which is what he started and eventually got out that business and went into other facets of business; Blockbuster Video.

Mr. LAFALCE. Do you know names of the companies.

Ms. DUNSON. I believe the company he started was Waste Management, Inc.

Mr. LAFALCE. Mr. Shapiro, is there communication between the Office of the EPA and Justice and FTC over this issue? Is there any concern within EPA about the concern of Ms. Dunson?

Mr. SHAPIRO. We have noted over time an increasing centralization of the industry, but we have not had any communication with respect to Justice or FTC that I'm aware of concerning possible anticompetitive issues. Again, our concern primarily in this area is to make sure that the national standards for protecting health and the environment are maintained at any facility that manages or disposes of solid waste.

Mr. LAFALCE. But that's really a tunnel vision approach if it only looks at helping the environment and doesn't look at the cost, business practices. It's not a very holistic approach. While EPA may be excused for having a rather narrow vision with respect to the issue, the administration could not be excused, because the administration would have to look at it holistically.

Mr. SHAPIRO. Again, I can only say what I know, and at this point, I'm not aware of any——

Mr. LAFALCE. Let me say that I would expect more assistance and guidance from the administration on this issue than has been provided thus far. Please communicate that to whoever should receive the communication.

Mr. WAMP. Will the gentleman yield? Mr. LaFalce, I would encourage that, but let's try to keep EPA's purview as limited as possible. I encourage the Department of Commerce and Justice or somebody else to look into that and let EPA do EPA's job. I'd hate for EPA to grow into new areas of responsibility. I yield back.

Mr. GLOVER. The Office of Advocacy had discussions with the Federal Trade Commission, and we plan on discussions with the Department of Justice.

Mr. LAFALCE. In Commerce to the——

Mr. GLOVER. We'll certainly mention that. But this is not a flow control issue. Flow control tends to, by and large, work toward concentration to one firm in one area and it does not work to deconcentrate. In fact, it increases concentration. So, let's not confuse these issues.

Mr. LAFALCE. There's a dispute about that, Mr. Glover. Ms. Dunson might say that, well, you need some flow control in order to moderate and create the competition and regulate the competition. The absence of it, theoretically, absent purchase and mergers and acquisitions, you have competition, but you have to live in the real world, and the real world is more and more mergers, more and more acquisitions.

Again, my point is, you can't just look at this internationally; you can't look at it nationally; you have to look at it regionally because you can't transport your waste a thousand miles, although a lot of

waste is being transported a thousand miles, especially hazardous waste.

Chairwoman MEYERS. Thank you, Mr. LaFalce. Mr. LoBiondo.
Mr. LoBIONDO. No.

Chairwoman MEYERS. All right. Mr. LoBiondo will hold his questions for the next panel. Again, let me thank these two panels. It's been very illuminating and I think we've learned a lot. Thank you very much.

The next people who will come to the table will be Mr. Sharpe James, mayor of Newark, New Jersey, and Randy Johnson, county commissioner, Hennepin County, Minnesota.

Mr. James, mayor of Newark, New Jersey, if you would start this panel.

Panel Three:

TESTIMONY OF THE HONORABLE SHARPE JAMES, MAYOR, NEWARK, NEW JERSEY

Mr. JAMES. Madam Chair, the Honorable Jan Meyers, Congressman LoBiondo and members of the committee, thank you for inviting me to participate in this morning's hearing on municipal solid waste flow control. My name is Sharpe James, the Mayor of Newark, New Jersey, past President of the National League of Cities, Trustee for the U.S. Conference of Mayors, and Chair of the U.S. Conference of Mayors' Solid Waste Committee.

Newark is the largest city in the State of New Jersey, a population near 300,000. I'm here today on behalf of the mayor's task force for lower taxes to reflect the opposition to mandated flow control expressed by the mayors of 175 cities in New Jersey, representing 3 million voters in the State of New Jersey.

We've already heard today from small businesses, who, like other consumers, are forced to pay excessive rates to dispose of their trash. I'm here to tell you that cities, just as much as those citizens, are victims of flow control. As the mayor of a major city in the State with the highest waste disposal fees in the Nation, I've seen first hand how flow control can adversely affect a city in many ways. I believe that flow control can properly be called an unfunded mandate.

As you know, last year, in the case of C&A Carbone versus The Town of Clarkstown, the Supreme Court held that flow control represents unconstitutional interference with interstate commerce. Prior to that decision, and indeed, continuing through this day, New Jersey used flow control authority to establish county government monopolies called improvement authorities.

This is another layer of patronage personnel that can dictate to mayors where they must take their garbage and at what price. As a result, the cost of waste disposal in New Jersey is the highest of the Nation, approaching \$100 a ton on average and higher in several instances, or three times the amount paid in most other States and double the rate charged and readily available at private disposal facilities.

Just think of this inequity; the authority of flow control in Essex County, where Newark is located, came in existence in 1987 when then Governor Thomas Kean instituted an emergency waste flow

executive order requiring that all solid waste in Essex County be directed to the Essex County resource recovery facility, located in Newark. The immediate effect of this mandated flow control was a dramatic increase in disposal cost to \$103 per ton for municipal solid waste, and \$109 a ton for bulk debris.

Prior to this mandate, Newark had been disposing of its waste at a nearby facility in another city for approximately \$25 per ton. With flow control in place in the county, Newark began paying four times as much for waste disposal as it had prior to the Governor's executive order. Thus, why should the city of Newark and other cities be held hostage by the county government? Why should the taxpayers of New Jersey have to suffer?

I am now confronted by a ridiculous situation of paying almost 50 percent more to dispose of solid waste than our neighbor, New York City. Ask Congressman LaFalce, he sends his garbage to Newark at 50 percent less than we in Newark pay because we're paying for the bond and indebtedness. His is a surplus use. Self-improvement authorities had to come, just add self-improvement for the members of that authority.

We in Jersey City and Newark and Paterson and other towns and cities represented by this mayor's task force, 173 cities and towns, we cannot afford to waste our scarce financial resources. We need an escape hatch from the sinking ship called flow control. Every unneeded dollar that our city spends on trash is a dollar we must raise from our hard-pressed citizens and business, taxpayers, a dollar that we must convert from maintaining our streets, fighting crime and developing our communities. For what? To support inefficient, overpriced and duplicate facilities that cannot compete in a free and open market.

You should further know solid waste and recycling facilities are not generally sited in suburban communities, as stated by the Congresswoman from New York. They're found in older cities like Newark, Camden, Trenton, Elizabeth, and Paterson. The city of Newark is now host to numerous solid waste transfer stations, recycling centers, cogeneration plants, and a major resource recovery facility. These are operating transfer stations in Newark which can dispose—there are operating transfer stations in Newark which can dispose of construction, demolition and bulk debris for \$65 per ton because they can recycle 50 to 90 percent of these materials. Yet the State of New Jersey and Essex County make every attempt to force haulers to utilize their far more expensive transfer stations because of unnecessary waste flow mandates. These mandates interfere with the market and are an unconscionable burden on taxpayers.

I doubt that there is much on which Grover Norquist and I would agree, but I am four-square in agreement with Americans for Tax Reform when they say, "A vote to reinstate the practice of flow control is a vote to raise taxes. Flow control is nothing more than a trash tax."

It is obvious that when Government, in effect, creates a monopoly, costs only spiral upward to the detriment of its citizens. Competition is what made this country the great entrepreneurial industrial Nation that it is. The breakup of the virtual monopolies held by AT&T and IBM demonstrate that competition ultimately bene-

fits consumers. Competition caused by both companies—competition caused both companies to trim the fat in the operation and to recognize that no guaranteed profits exist unless there was competition.

I believe that competition and innovation are what are needed in the solid waste industry, and not the governmental franchising of new monopolies. Innovation and competition will provide new businesses, jobs, and a tax base. Who knows what new and innovative methods can be accomplished in both the solid waste and recycling areas, provided they are not stifled by needless governmental interference.

The effect of flow control on small businesses is damaging in at least two ways; first, the obvious one of increasing the cost of doing business in a noncompetitive marketplace; and second, it bars entry to the market for companies that wish to recycle and dispose of waste. For example, trash hauling is one of the few businesses open to an entrepreneur with little more than a truck and ambition, regardless of whether he has an advanced degree or bank financing. Flow control, used to support large centralized projects, tends to consolidate the industry and can freeze out the small hauler who lacks the bonding capacity needed to compete with the big boys.

Flow control also locks up the trash supply for decades at a time when new approaches are emerging every day to recover and reuse resources contained therein. The New Jersey Environmental Foundation, representing all of the State's major environmental groups, has concluded that Government control of waste disposal stifles "technical innovation, private investment, and market development or lower-cost environmentally preferable material recovery and composting technologies."

Madam Chair, we've heard a lot about the need to preserve county credit rating, the need to pay off bondholders who had financed these facilities. Let me just say this in response. The adverse effects of continuing flow control far outweigh the cost for trash disposal and easily offsets the costs of refinancing and paying off the bonded indebtedness dependent on flow control. Why? Because counties, uncontained by competition, used their monopoly power to turn trash fees into revenue raising slush funds that support their bureaucratic and political pork barrel empires.

A study performed by KPMG Peat Marwick found that New Jersey could pay off all of its outstanding debt on solid waste disposal facilities at a cost of \$10.25 to \$12.67 a ton over 10 years or \$7.10 to \$10 a ton over 15 years even as municipalities and citizens save up to \$40 a ton on disposal costs. The bottom line is that their debt can be paid off while charging substantially lower fees.

The chart here shows that in 1986, when I became mayor, we paid \$25. It was a great day. The National Guard came and forced us out of a landfill, they forced us to go to a transfer station where we pay about \$109 per ton. Then that same county government forced us to go to a resource recovery facility, where we now are paying about \$80 a ton, when we know, on the open market competition, we can pay today \$60. Someone slipped me a note in this meeting—so I'm glad to be here—\$40 they'll take our garbage. So, there are possible savings that could go to hire more police on the

street, more teachers in our community, and take care of health care.

I wanted to say to Congressman LaFalce, he should never be for flow control because his garbage in New York City comes to Newark 50 percent less than we're paying because they have no flow control and they look around and say, hey, the best deal is Newark, New Jersey. Send it all to their supply and resource recovery plant. That's where their garbage is.

Finally, is this a problem simply for New Jersey? No, certainly, local municipalities across this Nation are encountering the same dilemma. For example, we look no further than this room. If flow control is such a good thing for Hennepin County, Minnesota, represented by the other witness on this panel, why is the city of Minnesota so opposed to it that the city council passed a resolution stating its opposition.

In a recent letter to you, Congresswoman Meyers, Susan Young, director of Solid Waste and Recycling from Indianapolis, noted, "The city is very concerned about the financial impact waste flow control will have on the solid waste operations. When Hennepin County exercised flow control authority over the processing and disposal of waste generated in Minneapolis from 1990 through 1993, they charged"—sounds like Newark—" \$95 per ton tipping fee at the Hennepin County Energy Resource Company, HERC, waste-to-energy facility. In the process," Madam Chairman, "they amassed a \$25 million surplus in the Hennepin County solid waste enterprise fund in less than 4 years."

Subsequently, the Supreme Court forced the county to compete with other waste disposal providers. The HERC tipping fee was reduced to \$60 without jeopardizing repayment of outstanding bonds, according to Ms. Young. The Minneapolis official also is a member of the steering committee of the group, Local Officials Opposed to Monopoly. Here's what they have to say:

"Experience with flow control shows that it seriously interferes with the ability of local government, those accountable to our citizens, to provide environmentally productive, cost effective solid waste management services to respond to the needs of our residents, and to protect our residents from future liability. Flow control is an invasion of home rule and an onerous unfunded mandate."

Madam Chair, I ask your support in halting this misguided rush to restore powers to counties that they never should have had. As you well know, communities in Kansas don't require any new authority to dispose of their trash. State and localities throughout the Nation have found many other ways to address their solid waste problem without resorting to the heavy hand of Government monopolies.

I urge you in this distinguished committee to communicate with the Commerce Committee and the House leadership that flow control is a bad idea and unnecessary. Legislation to extend it should be dropped or, as my colleague, Bret Schundler, mayor of Jersey City, the second largest city in New Jersey, has stated, "Let's bury flow control in the trash heap of disregarded ideas."

I might add here from the earlier testimony, Madam Chair, this is not against local government. As a past president of National

League of Cities, a trustee for U.S. Conference of Mayors, I'm an officer of local government. It's about local government not dictating—it's about local government keeping open competition. It's about local government being responsible for free enterprise. It's about local government supporting the concept of going to the lowest responsible bidder that's environmentally sound. It's about support of small businesses. It's a system that has made America strong.

So, the alternative, as another Congresswoman stated, the alternative is no dictation, no monopolies, no Government control price fixing, no slush fund. Let's make our cities and local governments strong. Let's make America strong. Let's end any attempt to have flow control. Thank you, Madam Chair and members of this committee.

Chairwoman MEYERS. Thank you very much, Mr. James. Our next witness is Randy Johnson, County Commissioner of Hennepin County, Minnesota. We're very glad to have you with us, Mr. Johnson. I apologize in advance. I'm going to have to leave briefly because of a competing meeting, and I've asked Mr. Zach Wamp to take over the chair.

[Mr. James' statement may be found in the appendix.]

TESTIMONY OF THE HONORABLE RANDY JOHNSON, COUNTY COMMISSIONER, HENNEPIN COUNTY, MINNESOTA

Mr. JOHNSON. Thank you, Madam Chairwoman and members of the committee. I am Randy Johnson. I am a commissioner from Hennepin County, Minnesota, which is Minneapolis and its suburbs. I am also the first vice-president of the National Association of Counties. I am testifying today also on behalf of the National League of Cities. Together, NACo and National League of Cities represent over 3,000 counties and 15,000 cities, the vast majority of county and municipal Governments in the country. We support limited waste flow control.

We appreciate being invited to this hearing, although seeing so many witnesses on these panels who are opposed to flow control and making so many vigorous arguments against it, I feel like the captain of the javelin team who has elected to receive. Despite being greatly outnumbered, we believe that a thorough review of all of the issues around flow control will lead to the conclusion that our position is the sounder one.

Counties and cities are involved with this issue for two primary reasons. First, our citizens hold us responsible for safely managing trash and garbage. Waste disposal or regulation of it has been a traditional and fundamental police power and public health function of local governments going back more than 200 years in this country.

Second, we are mandated by State laws to handle garbage and trash. We have mandated recycling quotas, mandated long-range planning requirements, mandated items which must be excluded from landfills and incineration, mandated consumer education programs. In short, we must deal with waste by State law.

We are not here today to complain about State mandates. It is important for you to understand that we did not ask our State leg-

islatures for them. We did ask for the tools to carry out those mandates. Flow control is one of those tools.

Not every city or county has chosen to adopt flow control as a tool for managing waste. In fact, less than 20 percent of the municipal garbage and trash in this country is subject to any type of flow control. But for those who are given the authority, like my county, we believe we can better manage our local solid waste management system if we exercise our local option to control the flow of waste generated within our own borders.

This Congress has talked a lot about devolving power back to the States and local governments. We agree with that. NACo and the National League of Cities are bipartisan, nonpartisan organizations, but I think it's no secret—and Mr. Luther would definitely vouch for the fact that I am known back home as a Republican who's pretty darn conservative and free market oriented. I like the direction and many of the things that this Congress has done and talked about.

Why then, we ask, should Congress in this one area carve out from the States' prerogatives the ability to decide how it will manage its solid waste, the waste that is generated within its own borders? We submit that there is no good reason for Congress to interfere adversely with State and local relationships when it comes to handling solid waste. States have provided great flexibility to counties and cities to experiment with the methods that work best for their communities.

Flow control is one of those methods. There are many variations on how flow control is implemented, just as there are many State and local approaches to this. Again, this seems entirely in line with the principles of this Congress in recognizing that whenever possible, the American people want governmental decisions to be made at the governmental level closest to them, the State and the local level.

Let me add a word about what the Supreme Court really said in the *Carbone* case last year. Justice Sandra Day O'Connor's concurring opinion is probably the best description of the constitutional situation. She wrote that the majority felt that when waste crosses State lines, it is in interstate commerce and subject to the exclusive control of Congress.

She also looked at the legislative history and said that while Congress and the committees had suggested and assumed and hinted and otherwise indicated that State and local governments have this authority, Congress had not been explicit enough in clarifying that responsibility. That is what we are asking for now, that Congress clarify that States have this responsibility.

Flow control has also allowed us to manage solid waste over the long term with stable prices and in an environmentally sound way. Without flow control, many counties will not be able to meet State mandates to recycle or reduce the amount of trash going to landfills. We have been very successful over the last two decades in increasing recycling and reducing our country's dependence on the landfills, policies that Congress established as far back as 1976.

So, why is this issue so controversial? The answer is that some large multinational waste companies do not agree with the Federal policy to reduce reliance on landfills. Landfills are their primary

business, and if State and local governments continue to be successful in reducing the amount of trash which is landfilled and encouraging entrepreneurial solutions, they will not make as much money. Quite simply, our progress in diverting waste from landfills stands in the way of the future market development plans of the multinational waste industry's move toward more landfills and bigger landfills.

So, some of these companies have spread fear among small haulers and small business people about what we were trying to do in seeking legislation to reaffirm limited State flow control authority. Flow control is not a debate between public versus private facilities. In fact, flow control systems enabled many small trash haulers to survive, to compete, to flourish. By entering into long-term contracts for disposal and paying the same price at the designated facility as every other hauler, small haulers are able to compete against the large, multinational, vertically integrated waste companies that own their own mega-landfills, transfer stations and tens of thousands of trucks throughout the world.

Flow control can provide a level playing field for the small haulers who would otherwise be driven out of business by their big brothers, their very big brothers in the industry. As Congressman Wamp pointed out earlier, he wanted to sign up for this committee because it was a committee on small business, not a committee on big business. We are concerned about small business too.

As Mr. Jere Glover testified earlier, monopolies are seldom in the best interest of small business. I agree. I believe that this principle certainly applies to small businesses when they contract to have their solid waste hauled away. Waste flow control is one way to deter monopolization in the waste hauling industry.

Mr. Bartlett's concern about entrepreneurial hauling is very important. In many communities, it is best handled through waste flow control so that entrepreneurial hauler, when he takes his waste—that waste that cannot be recycled—to a waste facility, he doesn't have to pay more than the big, big hauler.

My county and most counties that utilize flow control are partners in solid waste projects with the private sector. The Hennepin County system is squarely based on private enterprise providing almost all of our solid waste services. You will find, as we look across the country, that in most communities, trash collection, trash disposal and recycling services are contracted out to private entities.

There is some more misinformation, and that is that the cost of solid waste disposal is always higher in counties and cities that have flow control. The integrated solid waste management system that States mandate us to provide involve many different services, not just burying garbage in a landfill.

What I would like to do is a comparison. I would like to show a chart that is not mine first. I'm not sure what the source of this chart is. Maybe we'll find out later. This chart purports to show the average tip fee with and without flow control. Of course, I think we all know when it comes to averages, we have to be careful. What it appears to show is that with flow control, costs are always higher for all facilities, smaller facilities and larger facilities. That red factor is supposed to be the cost, the cost of having flow control.

Now I would like to show you our chart and show what the facts really are. The tipping fee and the disposal fee are not necessarily the total waste system fee. This is a chart showing apples and apples, two counties in the State of New York. In Onondaga County, the tipping fee with flow control—the operating disposal fee is lower. However, the total disposal fee is higher because in that county, recycling, composting, source reduction, education, and other parts of a solid waste management system are paid for out of the tipping fee.

In Orange County, the disposal fee is actually higher, but the tipping fee is less because they don't have the same programs for recycling, composting, or they can't even quantify the cost of those programs. So, on an apples-to-apples basis, here is another example of where the actual system cost with flow control is less than the county without flow control, and the results are better.

Private landfills don't have these kinds of mandates. All they do is bury the garbage and then hope that sometime in the future, huge bills will not be sent out to clean up that landfill. We found out in my county and our neighboring counties what can happen when trash goes to the cheapest, temporarily cheapest alternative. Our small businesses got hit with bills of \$15,000 to \$100,000 to clean up waste that they had sent to the landfills up to 20 years earlier. Not hazardous waste generators, this was the Dairy Queen, the fast food restaurants, the hardware stores. Even our metropolitan mosquito control district's office got hit up for a bill for waste sent 20 years earlier.

If my county and other local governments are not allowed to continue to use flow control, the taxpayers rather than waste generators will be forced to pay for these programs. Because of the rapid move throughout the country to volume-based pricing, those who generate the most waste are paying the greater share of the cost for recycling under these systems. That is what we want; those that generate the waste ought to pay for the cost of the waste, not the property taxpayers.

Apart from being the right thing to do, this matter is an urgent one for my county and many other local jurisdictions. Since 1980, over \$20 billion in State and local bonds have been sold for solid waste facilities. Unless legislation is promptly enacted by this Congress, many communities face severe financial consequences.

Already downgrading of bond issues affecting \$1.1 billion in outstanding debt have occurred in just 1995. Some communities are getting closer to outright default. That is why I was pleased when witnesses, Mr. Glover and Mr. Broadway, earlier said that they supported waste flow control for the life of facilities or for the life of bonds. That is what is provided in the currently proposed legislation.

In conclusion, current rhetoric aside by flow control opponents, counties and cities did not act to manage solid waste in any type of an effort to replace free markets with exclusive Government monopoly control. We acted in good faith. We represented the public interests. The systems we have built in public-private partnerships are sound accomplishments.

Please don't change the rules on us now. Cities and counties overwhelmingly support waste flow control. The handful of excep-

tions are almost always municipalities who haul their own waste and want to maintain their own hauling monopolies.

The other witness talked about the city of Minneapolis. Minneapolis is the largest city out of 47 in my county, although it is less than a third of our county's population.

It is the only city of the 47 in our county that opposes waste flow control. It is also the only city that hauls its own waste on city trucks with city employees. The city would like to maintain that situation. In the rest of our county, waste hauling is privatized, and private companies compete. They compete individually for individual homes and business, or they compete for routes, or they compete for a city-wide contract. They have competition. They have competition in hauling. The taxpayers don't pay through their taxes for waste hauling in those communities.

This should be a local decision. If Minneapolis wants to haul its own waste with city employees on city trucks and continue to do so, I think that's a decision for the city of Minneapolis' elected officials. If the people of Newark and the elected officials want to maintain that same system, that's a local option. But don't blame the costs of that type of a hauling system on waste flow control, which levels the field for all the haulers, which encourages competition, which drives down prices, which encourages new, innovative methods in hauling.

We hope that the committee sees the value in supporting legislation that will allow us to continue to pay off our bonds and manage our systems the way our citizens want us to. In the last Congress, a waste flow control bill passed the House unanimously. It failed in the Senate on the final day before adjournment because it was on the consent calendar and one Senator objected to the bill, not to the flow control provisions, but to something else that was in the bill.

This Congress has shown even greater willingness to move decisionmaking out of Washington and to State and local governments. That's all we're asking for; State and local options to use waste flow control where it's appropriate to encourage competitive hauling, to encourage innovation, to oppose monopoly hauling and to handle waste in an environmentally sound and economical manner. Thank you.

Mr. WAMP. Thank you, Mr. Johnson. It is the intent of the chair to convene the fourth panel after all the Members have had an opportunity to question these two panelists. I would notify the fourth that we're going to try to enforce the 5-minute rule on the next panel. Each of these gentlemen well exceeded their 5-minute rule, and based on their commentary, I think we may have a need to control blow control instead of flow control.

I'm going to call on Mr. LoBiondo first and then Mr. Luther and then Mr. Funderburk and then Mrs. Myrick, in that order, if that's acceptable, unless other Members arrive in the meantime. Mr. LoBiondo.

Mr. LOBIONDO. Thank you, Mr. Chairman. I'd like to thank Mayor James for coming to visit us and discuss your concerns for flow control, and Mr. Johnson, for your very balanced presentation on what we have to look at with this issue. I guess really, Mr. Chairman, some comments about New Jersey because Mayor

James had some pretty harsh comments about our situation and setup.

I served as a county elected official for a while and we had many landfills that were environmentally unsound. New Jersey made some difficult decisions in those years in the '80's, and especially the early '80's, that we would protect our ground water supply, that we would do the environmentally right thing. Sometimes that is not a cheap price tag.

State legislation that resulted in mandating environmentally sound landfills resulted in local communities and especially the counties making investments that totaled some \$2 billion. I can understand and will be a stronger proponent for the free market system and for competition as anyone you'll find, Mayor, but the reality is that someone had to step forward at the time with the legislation to ensure that those landfills could be built.

I think that it makes all the sense in the world to say that we should open up the competition when in fact these obligations are settled. But in the meantime, we can't talk in abstract terms about who will be responsible if in fact these operating authorities go belly up. They built these landfills. Our situation in southern New Jersey is similar, but a little bit different than yours in Essex County and in the north. But these environmentally safe landfills were built with the intention, and the bonds floated, that they would be able to have a flow of waste coming in that the taxpayers would be able to be satisfied with their obligations.

If in fact that's cutoff at this point, we've got the citizens of New Jersey that are going to be holding the bag. While it sounds good to say that we would encourage that competition there still is not a viable answer as to how those citizens will avoid picking up the tab for the \$2 billion. It's a big price tag.

I know that we've got situations in southern New Jersey that give us great cause for concern. So, I appreciate your taking the time to travel to us to give your opinions on this situation. Again, Mr. Johnson, you covered a number of points that, in the essence of time, I won't rehash, but I think that this debate is really warranted. It should continue. There are many substantive issues. But ultimately, we have to be concerned about the responsibility to the taxpayers that we represent. Thank you, Mr. Chairman.

Mr. WAMP. Either one of you have any commentary on Mr. LoBiondo's remarks.

Mr. JAMES. Just one comment—and I appreciate your remarks or the comments. When they made the legislation in 1975 calling for a resource recovery facility in New Jersey, they mandated there be one built in every county. Then they realized that was a flawed statement. You shouldn't have one in Essex, Bergen and so forth. So, now there is one built in Essex. We receive the garbage from Bergen, we receive it from Hudson, and we receive it from New York City.

My only point is what happened in Minneapolis, Hennepin. They were charged \$95 and they went to the Supreme Court and found out that they could charge \$60 or \$65 and still pay off the indebtedness. So, that's our only concern, is that we need the alternative to make sure that the cost per ton is geared to paying off the debt as opposed to all the frills that these authorities, self-improving au-

thorities, become involved in; the travel, the luxury, and the other expenses. So, that's our concern.

I agree with everything being said. But just as they went to court in Minneapolis and found out that they could charge \$65 to pay off the indebtedness, that's why we say free enterprise needs to create that competition, so we do not have a monopoly at the local level.

Mr. WAMP. Mr. Johnson.

Mr. JOHNSON. Mr. Chairman and Mr. LoBiondo, thank you for recognizing that many local governments stepped forward to make difficult siting decisions and built facilities and issued bonds and did the right thing. We feel that we need to be protected. The situation in Minneapolis and our tipping fee seem to be of great interest to a few people.

Let me clarify what really happened. The Supreme Court didn't tell us to do anything. We have never been involved in a Supreme Court case. We did reduce our tipping fee from \$95 to \$60 in order to match what haulers were paying to go to older, leakier landfills just across State lines. For Hennepin County and Minneapolis, we are very close to Iowa and very close to Wisconsin and very close to some older landfills.

However, we must make up the cost of our integrated solid waste management system. We don't make money in the basement of the Hennepin County Government Center. The money has to come from somewhere for the rest of our system. So, we were forced to impose a 9 percent sales service fee collected like a sales tax by the haulers on residential customers and 14 percent on business customers to make up for that.

We are now very close to adopting a fee on the property tax statements that will be paid by property taxpayers in order to make up the difference. The cost of operating our waste-to-energy plants is about \$50 a ton. We have two plants and we have different rates and we pay a different fee for one of them depending on how much waste goes there.

We also operate transfer stations at \$20 a ton and we have a very extensive composting and recycling program. Our county recycled a true and honest—and composted a true and honest—50 percent of our waste stream last year. We didn't do it adding in street sweepings or things like that. That was honest recycling. We think that is the highest rate of any metropolitan area in the country. We were able to do that because of flow control. We were able to charge the generators of solid waste based on how much they generate in order to subsidize and jump start our curbside recycling programs.

[Mr. Johnson's statement may be found in the appendix.]

Mr. WAMP. Thank you, Mr. Johnson. Mr. Luther.

Mr. LUTHER. Thank you, Mr. Chairman. Thank you, witnesses, in particular, Commissioner Johnson of Minnesota. I think that was a very good overview of the experience of Minnesota.

I guess the only question I would ask of Mr. Johnson: Is there anything additional you could share in terms of the opportunities for small business, the competitive environment, that the system in Minnesota, not only in Hennepin, but in other counties in Minnesota has created? Anything at all you could share with the com-

mittee? Because obviously it's from that point of view that this committee is reviewing this issue.

Mr. JOHNSON. Mr. Chairman, Mr. Luther, under our system, or at least the system as it was existing, it's kind of in a flux right now as we wait for Congress to act. We have been able to encourage a lot of local recycling because we have been able to collect a sufficient volume of materials so that local entrepreneurs can go into business to attempt to recycle and truly make productive use of materials such as plastics, such as carpets.

We in no way flow control materials that are indeed going to be recycled because we think that is a much better thing to do with materials, if indeed they are going to be recycled. We believe that waste flow control in our community, by having the same uniform tipping fee, has encouraged small haulers to stay in business as well as encouraged some small haulers to get into the business.

Like most other parts of the country, we have seen several waste management companies gobble up small haulers. I think more than a thousand small haulers were gobbled up by just the two largest waste hauling companies in the last 5 years nationally. We believe the rate has been nowhere near as fast in our community because of flow control. As a result, small businesses of all kinds have more choices and more competition when they are deciding who is going to empty their dumpster once or twice a week and how much they are going to pay.

So, we think that in our community, waste flow control clearly encourages competition, and works in the best long- and short-term interest of small businesses.

Mr. WAMP. It's my understanding Mr. Funderburk will reserve his questions for the fourth panel, and Mrs. Myrick the same. Let me just ask a question to you, Mr. Johnson, in closing of this panel, to further define NACO's position on grandfathering and what your acceptable compromise may be on a narrow grandfather position.

Mr. JOHNSON. Mr. Chairman, we believe that—our position is that we would like this to continue to be a planning tool for all counties, but we also recognize the political realities. We support the bill that passed the Senate, that we believe is very narrow, that would allow waste flow control and facilities that existed prior to the Carbone decision or where bonds were sold prior to the Carbone decision for the life of the bonds, or to the operating agreement for those bonds.

There are some other situations where some cities and counties expended substantial amounts of money in reliance on waste flow control and then stopped because of the uncertainty surrounding Carbone and as Carbone went on appeal. Perhaps the best way to handle those is on a case-by-case basis. In other words, those of us who played by the rules think we ought to be grandfathered in with the rules as we all thought they were.

When I taught legal writing at the University of Minnesota Law School, I used the Interstate Commerce Clause as the basis for legal writing problems because there are so many ways of looking at it. But when I look back, I don't think 200 and some years ago, the founding fathers said that it is important that Congress have exclusive control over interstate commerce and by gosh, that means that Congress has exclusive control over garbage that moves from

Massachusetts to Rhode Island. I just really don't think that is what they had in mind.

Mr. JAMES. Mr. Chair, can I make a 2-minute statement.

Mr. WAMP. Yes, sir, 2 minutes.

Mr. JAMES. Thank you, Mr. Chairman. Industry and labor in a fair rate of profits is the American way and I don't think we should oppose that. Our opposition to mandated flow is simply that mandated flow control leads to mandated incinerators mostly located in urban areas, leads to mandated monopolies, which we call self-improvement authority, leads to mandated rates, not free enterprise. It creates not a level playing field.

The only reason New York city can send its garbage to an Essex County resource recovery facility located in Newark, New Jersey and pay \$40, and the residents who live in Newark across the street are paying \$80 is because of the absence of open competition and because of mandated flow control. I just wanted to get that in the record. Thank you.

Mr. WAMP. Thank you both. Each gentleman has made their points very powerfully and articulately and we're grateful for your travels and being with us today and wish you the very best. At this time, we will attempt to ask you to leave and convene the fourth panel. I think we have five panelists.

Panel Four:

I will have the introductions in a moment, but I would like to introduce Mr. Mel Kelly first. He has a train to catch and I want to make sure he gets his testimony in before the train leaves without him on it. He is the president of K&K Trash Removal in Severn, Maryland. Mr. Kelly, if you would try to limit your commentary to as close to 5 minutes as possible, we're going to try to get you in and out of here and then we'll move on to Mr. Felix next.

TESTIMONY OF MEL KELLY, PRESIDENT, K&K TRASH REMOVAL, INC.

Mr. KELLY. Thank you, Mr. Chairman. I'll take a lot less than 5 minutes, I'm sure. I'm opposed to flow control, and that's written in the written testimony that I've submitted. The reason that I'm here today is because every year for the last 7 or 8 years, I have been invited to a school, mostly elementary schools, and this year, for the first time, I've been taken into a high school, to talk to students about business and what business is all about.

This year, for the first time I went into a high school and I decided that I would talk to those young people about what businesses' responsibility—especially small businesses' responsibility is to the community in general and to them specifically. The thing that I left with them was that every small business—or every business, small or large, has a responsibility to come out and make itself heard in the public debate on public policy.

That's why, although I have a loan to settle today and I'm trying to get a new building finished in the next 2 weeks, that I'm here today. So, that's all I really have to say. I'm opposed to flow control because it hurts our business, it hurts our customers and it hurts your constituents. Thank you.

[Mr. Kelly's statement may be found in the appendix.]

Mr. WAMP. Very good. Thank you.

Your written statement will be a very valuable part of the record of this hearing today and we're grateful for your time. At whatever point you have to get up and remove yourself, we'll understand.

I would ask that Congresswoman Sue Myrick, from Charlotte, to be the first to introduce Mr. Paul Felix. Mrs. Myrick.

Mrs. MYRICK. Thank you, Mr. Chairman. I am glad to have Paul here. He's a constituent from the 9th district of North Carolina, and he is the president of Container Corporation of Carolina. I think you'll find it very interesting to hear what he has to say regarding the effect of flow control on small business and consumers as well. So, Mr. Felix, welcome. We're glad you're here today.

Mr. FELIX. Thank you very much. I appreciate that.

Mr. WAMP. If I may interrupt—also, Congressman David Funderburk would like to add something to that. David.

Mr. FUNDERBURK. My pleasure, Mr. Chairman. I just wanted to join Congresswoman Myrick in welcoming Mr. Felix here to the committee today and say that I appreciate what he's doing in Carolina and beyond and I'm very sympathetic to his story and his concerns here.

Mrs. MYRICK. We're very pleased to have two of us on this committee.

Mr. WAMP. I'm very pleased to use the chair's privilege to recognize that Sue's husband, Congresswoman Myrick's husband, Ed, is in the audience today. I know that he has persevered, as all the congressional spouses have, with our schedule thus far this year. I happen to know him personally and happen to think he's an outstanding gentleman. I want to recognize his presence as well. Now, Mr. Felix.

TESTIMONY OF PAUL M. FELIX, PRESIDENT, CONTAINER CORPORATION OF CAROLINA

Mr. FELIX. Thank you very much. I appreciate this opportunity to address this Committee. This is a Small Business Committee, and I will focus my comments on small business. You have before you my written statement. That serves as my testimony on public record, but I have chosen to elaborate on that relative to small business.

My name is Paul Felix. I go by Monty. I am president of Container Corporation of Carolina. We are a \$40 million commercial and residential solid waste management company located in Pineville, North Carolina, just outside of Charlotte. We service North Carolina, South Carolina, and Georgia through five operating divisions and employ well over 300 people. We have been in business 25 years and have serviced a number of customers in those areas that exceed 20,000.

I'm pleased to say that in the 25 years we've been in business, we have not been eaten up by an oligopoly, we have not been consumed by a multinational corporation. By accounts previously mentioned, if that were true, I would not be here today, I would be extinct. So, I do want to put it on the record that we are in fact a good company, a profitable company, and we have stayed that

way over the 25 years as a private company for one reason only: We focus on our customers.

Ten thousand of our customers are small businesses. By focusing on our customers, it is our responsibility as a service provider to seek out in the marketplace the lowest cost landfill opportunity in that marketplace for my customer. Why? Because when my small business customer has a cost efficiency, that small business customer is profitable, and that small business customer grows and hires people and contributes to the community. That's the reason you stay focused on customers.

The issue in flow control is quite simply this: It's choice. It's choice in the sense that flow control would take away from me and other service providers the ability to make the right economic decision for that small business entity. To give you an example, if flow control were implemented in my company, it would have an net impact of increasing the cost of disposal to the 10,000 customers who are small businesses by over \$15 million. That is significant. A small business can't handle that.

Secondarily, it's an issue of choice relative to super-fund. Super-fund law today says that a generator, a hauler and a disposal entity are responsible legally for any super-fund liability. Under flow control, I would be mandated as well as my small business customers to take my waste stream to a site that I have no control on. If that site becomes a super-fund site, my small business customers are financially liable for that.

Under flow control, the Government entity that requires me to take that waste stream to that site has no financial obligation. They are not financially accountable. I'm a businessman. I hire people, I train people, I serve customers, I make a payroll, I pay taxes. I'm in the real world. I work with small businesses. I am one and I have over 10,000.

This is an issue of choice. It's an issue relative to, do we keep choice with small business people like myself and my customers to exercise the most economical and environmentally prudent decision? Or do we move that choice to a Government entity? The bottom line in all of this is quite simple to me: Do we burden a small business with one more dollar of cost so that that small business can be unprofitable and therefore not grow? Or do we prudently say no, we'd rather have that small business have one more dollar of revenue, have a few more cents of profit and be able to grow and contribute to the community? Ladies and gentlemen, that is the issue. The issue is choice. That is the debate. I want to thank you very much for this opportunity to make my comments. Thank you.

Mr. WAMP. Thank you.

Mr. FELIX. Mr. Richard Perry travels to us all the way from California, is the executive director of California Refuse Removal Council. Mr. Perry.

[Mr. Felix' statement may be found in the appendix.]

TESTIMONY OF RICHARD A. PERRY, EXECUTIVE DIRECTOR, CALIFORNIA REFUSE REMOVAL COUNCIL

Mr. PERRY. Good morning, Mr. Chairman and Members. I am Richard Perry, Executive Director of California Refuse Removal Council. I also today am representing the California Solid Waste

Alliance. This alliance is made up of the League of California Cities, the California Supervisors Association, Solid Waste Association of North America, California chapter, as well as CRRC and Norcal waste, the largest independent private firm in California.

We take a little different tact on flow control. First of all, we're somewhat neutral. It goes back to what was earlier said by Mr. LaFalce. when he said there was a need for a definition of flow control. What I heard discussed today comes nowhere near what in California we assume is flow control. I say "assume" because there is no mandated flow control within our State, but the way that we do contracts for solid waste management in the State of California, through franchises, contracts and ordinances, many times they will designate a facility.

That facility may not be a municipal facility. That facility designated may be one of my members. Most times, it will be a municipal facility because they're trying to recoup the money they've got in their bonds. However, we are not forced to deliver to a facility throughout the State of California. It's independent counties and cities that have taken this upon themselves.

What we're worried about through the Carbone decision is, the longer it's out there, the broader it's interpreted; the broader it's interpreted, the closer it comes to our fear that someone's going to make the statement about franchises, contracts, ordinances as being an insult to the Commerce Clause, something that a State law allows and that we are very concerned about.

What we have attempted to do in the last several months through members of the California delegation as well as members of the Commerce Committee, is to get language into whatever vehicle moves forward that simply states the way that California does business, and it's not just California, it's almost the entire west coast, is not an insult to the Commerce Clause. We are working under a document, Statutes of 1995, this one from our Integrated Waste Management Board. This is just the Public Resource Code that deals with solid waste, not the Health and Safety Codes, Transportation Codes, Business, Rev, Taxes, et cetera.

We have a pretty significant amount of legislation and regulation that governs us. We have fears of monopolies. For some reason no one wishes to name names I've heard it danced around without naming the parties. I have a fear of BFI, there's one; WMX, there's two. If there's a monopoly working in the waste industry, it's not through the use of flow control. It is exactly, as was stated by Ms. Dunson earlier, you read Waste Age, you'll see other waste companies gobbled up by these large international firms.

Mr. Felix, you say you're not for sale, but I'll tell you what, you sound like a good company and I'll bet you're on several short lists. I have lost members both to WMX and BFI. The statement that these companies delve mostly into nonrecycling goals and other activities, is true. In California, the larger internationals, multi-nationals, are more interested in collecting garbage, burying garbage and collecting the money that goes along with it.

I was told to be prepared to have people speak about NERA and I'm not going to waste a lot of time on it because as all of us that have taken statistics knows, you get delivered what you ask for.

But I will point out one thing. BFI compares a \$58 a ton MRF fee to 13 landfills at \$37 ton, in their narrow report.

A material recycling facility costs a lot more to build, it costs a lot more to operate than just simply burying garbage. So, the fact that it is 58 versus 37 is not a surprise. California really does have some of the lower tip fees in the Nation. We run from as high as \$85 ton out into the northern part of the State, which is very limited in growth, to \$16 ton down in Los Angeles. So, the economies of scale have brought down the tipping fee. Our tipping fees go for a multitude of programs, not just solid waste management, but all the recycling endeavors and everything else that's encompassed in the Statutes of 1995.

We have worked very closely with our local officials in the State of California. We feel that there has not been a tremendous rush to force people into facilities. However, we would like that to be allowed still in their jurisdiction. They are being frightened. The California Public Securities Association—I won't read the entire letter—Mr. Charinako, the Chairman, states in here, though, "The interest of bondholders' equity in primary and secondary markets could be adversely impacted without an amendment to address the unique California market of solid waste issue bonds."

That is not only being aimed at local governments, but in meeting these diversion goals, which requires the material recycling facilities, to divert 50 percent, and 25 percent in California; 25 percent, in 1995, and 50 percent by the year 2000. As we start to erode on the ability to direct materials to these four wishes, my own members themselves are being threatened by bankers and bondholders, that if they cannot identify a stream of garbage or recyclable materials going to their facility, they are more likely not to get the loan to build that facility.

We are in kind of a unique position in that we have not felt the effects of flow control. Our local and small businesses—and my people are small business operators—have not seen that it's more expensive in the counties that they operate in that have some form of flow control. Obviously, we have been somewhat in the dark as to what has been occurring elsewhere. The decision on Carbone will now direct solid waste management throughout the county.

I will close with one thing. I heard "national association" mentioned many times. The National Association of Solid Waste Management, NSWMA, does not represent anybody out west other than WMX that I'm aware of. They are made up of the major corporations, mostly in the East. I don't even know if they have any people other than WMX west of Ohio.

They are not the national association for the west coast. They came into California, Idaho, Montana, Oregon, Washington. They tried to set up a loggerhead there. Their aims and ours did not mate, so we have separated ties. That's been some years. So, there is no national group advocating our position at this point in time here on the Hill.

Mr. WAMP. Thank you, Mr. Perry. Mr. Clements and Mr. Bell, if you will bear with us. Mr. Bell, we do have a recorded vote on the House floor. The Members will have to go there and cast one 15-minute vote. I do not believe it's followed by other votes. We will need to recess since we will not be able to finish both of your testi-

mony prior to the vote. We will recess for approximately 10 or 12 minutes, and then we will convene with these final two. Thank you, and we will recess momentarily.

[Recess.]

Mr. WAMP. If we could reconvene the hearing, please. Mr. Clements? The chair recognizes Mr. Clements.

TESTIMONY OF BRIAN W. CLEMENTS, PRESIDENT, CLEMENTS WASTE SERVICES, INC.

Mr. CLEMENTS. Mr. Chairman, good afternoon, and I know you'll want to share all my comments with your colleagues. Good morning. I'm Brian Clements. I'm president—or good afternoon, rather, I'm Brian Clements, president of Clements Waste Services. We're a small waste hauling in Berks County, which is in southeastern Pennsylvania. I'm the third generation of my family to own and operate this business, and I'm pleased to say that my two oldest sons are also now working for the company. We have 40 employees and operate approximately 20 trucks, and I believe my company's typical of a thousand small, family operated waste hauling companies around this country.

Companies our size haul and dispose of about 50 percent of the household and commercial waste generated in America. On behalf of the many small haulers in the United States and more importantly, our customers, who are most directly impacted by the high cost of flow control, I thank you for the opportunity to be before you today.

Let me tell you why we care about flow control. Flow control is not an issue that commands a lot of attention inside the Beltway. However, in communities across this country, flow control has a serious and detrimental impact upon every household and business. Trash disposal's a serious business and its costs cannot be ignored.

Flow control is nothing more than an artificial monopoly created by local governments. It's antifree market, antismall business, anticonsumer and antienvironment. The Supreme Court was right to strike down flow control and Congress would be wrong to resurrect it.

My business operates on a simple principle: People in businesses generate trash that require disposal service. I offer in a very competitive marketplace to haul and dispose of the trash at a price determined by the marketplace. I might add that I compete with the national companies, Waste and BFI. While it's not easy competing, I would be reluctant to run to the Government to be protected. I mean, if I cannot run my business competitively, I should get out of business. I would also add that a number of my competitors that chose to get out are rich and they're fishing and hunting while I'm down here doing things like this, so, there's no down side to that.

Competition and lower market pressures require that I offer my customers the best service at the lowest possible price. I have to, in order to compete, be free to lower my costs whenever possible. In my company, disposal costs are my biggest single line item expense, so searching for the most competitive disposal option is critical to lowering my operating costs. Lower disposal costs for me, because it's so competitive, means lower disposal costs for my customers.

Unfortunately, flow control injects an artificial authoritarian force into a competitive marketplace. When local governments mandate where trash must be disposed of, they also dictate the price. This price that they charge, I would add, is not only related to the cost of paying off their bonds. They have license fees to license your truck to dump where they're making you dump. They have license fees to license your containers, and all the rest of their bureaucracy that gets funded by it. Under flow control, my disposal alternatives are eliminated. I can no longer shop for the best fee and that means my customers wind up paying more.

We've heard testimony from the EPA that flow control also does not really encourage recycling. As he stated, about 3 percent of the waste that was recycled in 1992 was subject to flow control, while 50 percent of the waste that was incinerated was subject to flow control. This same data indicates that new incinerator capacity is sufficient to increase waste incineration by 20 percent is in the advanced planning stages. I would suggest that flow control promotes incineration and discourages recycling.

Let me digress here and just say that incinerators are very costly to build and operate. Bond issues follow incinerator construction plans like thunder follows lightning. Investment bankers love issuing bonds, and it should come to no surprise to this committee that investment bankers are also supporting flow control.

In my home county, the county commissioner's hired investment bankers to draft our county's waste plan. Despite numerous appeals from the existing private sector disposal facilities that historically had provided disposal capacity to our county and wanted to continue to do so, the investment bankers' plan called for floating bonds to build a brand new county-owned incinerator, a brand new county-owned transfer station, a brand new county-owned landfill, and a brand new county-owned recycling facility.

In my opinion, this was done to make the bonds issue as big as possible. Only expensive litigation and with the help of the Carbone decision stopped this crazy plan from going forward. As a result of the free market that exists today, our county's residents are enjoying disposal fees significantly less than those projected under the original county plan. I would add that those savings are adding up to about \$3 million a year for our businesses and residences.

Not surprisingly, local office holders who invested political capital in incinerator construction also are finding it necessary to support flow control. What is always absent from their rhetoric is how much private sector investment that was made in the marketplace when it was competitive is being impaired and displaced by their flow control actions.

This opportunity to speak out against flow control is deeply appreciated. It's very much a small business issue. I would add that I've got lots of letters from my small customers to Congressmen opposing flow control. It's very much a small business issue, and I think they need to see their cost be as low as possible so they can compete. What my company and I believe many small companies cannot support is the governmental intrusion in the marketplace. Flow control eliminates competition, discourages market forces, and ultimately drives up prices.

Congress should not act to allow implementation of flow control. I would encourage this committee and your colleagues in the House to take a stand in favor of free markets, open competition, lower prices and a better environment, and you can do this by opposing flow control. Thank you, Mr. Chairman.

Mr. WAMP. Thank you, Mr. Clements. Next we have Mr. Ken Bell, who flew on the red eye to be with us from Washington State. He is with a company called Recomp of Washington. Mr. Bell.

[Mr. Clements' statement may be found in the appendix.]

TESTIMONY OF KENNETH BELL, RECOMP OF WASHINGTON

Mr. BELL. I'm going to come from the gut here for a second because it was a red eye and I'm kind of short of patience. I've been up all night and some guy wanted to talk to me about projects in Brazil on the plane.

I've got a prepared statement that our attorneys drafted, but I'm going to respond to some things today. We are a small company. We are a private company. Privatization was established in our county because the county chose to get out of the waste business. We are 300 miles from the nearest landfill. Our county chose to prioritize the way that they deal with waste.

The issue of flow control is the means by which we as a private company invested. I'm here to kind of summarize what the report is going to tell you. We built our facility in 1985. The debate about flow control seems to assume that flow control is merely a governmental intervention which stifles competition.

If I can leave you with no other impression, it would be that Recomp is a small business, and we support flow control for one reason. We support it because back when flow control was established, it was the basic power under which we committed ourselves. We committed ourselves to somebody different than the Government. We committed ourselves to bankers. I think that's a key point. Our bankers needed something to guarantee the facility.

But now flow control is being undermined and so is big business. We think flow control ought to be preserved at least where it existed before 1994. Out in the State of Washington, counties and cities have the primary responsibility for solid waste. These local governments need to make sure that there not only is someone there to take care of the waste, but also that the waste will be handled in ways that makes sense to their community.

In our community, they chose different waste hierarchies for handling waste, and there's open competition within those hierarchies. As far as incineration, there are two companies in our small county of 140,000 people who incinerate. Two companies. In Whatcom County, the local government has long favored recycling and energy recovery over State and straight landfilling. They do that even today. As late as November of 1994, they chose to reestablish those priorities rather than dictating one company to go to.

As a company, we invested in those priorities. We stepped up to the table when the Government couldn't and wouldn't. They couldn't impose a tax to fund their own system, so they chose private industry to do it. All they said was, "Here is what we want you to do, go do it." We did it.

Our waste-to-energy facility was built in 1985. Our MRF and composting facility was built in 1990. We have a capital investment there of \$15 million. We are a one-plant company. We employ 37 people. We are a small business. We don't have the finances of the big corporations. We don't have the bonding capability of the local governments. We have bankers that we have to respond to.

Whatcom County gave life to a solid waste policy by passing an ordinance. The ordinance required waste to go to facilities that remit part of their tipping fee back to the county, which they use to close their old liabilities, because they couldn't get it themselves. The flow control ordinance does not say that all waste must go to our company, it says that all waste has to go to a waste-to-energy facility or a material recovery facility. Anyone can compete.

It's worth noting that ours is not the only one in the community. We compete with another one that's there currently, and we compete aggressively. But we established a hierarchy for processing. We are, however, hard pressed right now to compete with waste companies that operate on a different playing field. These companies get rid of waste and they do it legally, but do it in a less expensive manner than we do. They don't recycle, they don't compost, they don't incinerate the burnable portion, and they don't recover energy. They simply take it to a landfill.

I'm not talking about obstructions to free market. As soon as the Carbone case came down, a local company with multinational ties started building a facility down the street with not near the capital structure that we have. We have a \$15 million capital structure. You can build a transfer station for \$800,000.

I did not come here to extol the virtues of incineration over landfill. If they had directed us at that time to build a transfer station to haul, gladly we'd compete in that market. That's not what they directed us to do at that time. They directed us in a different direction. We invested based on that. We made commitments to bankers based on that.

To me, it's not a question of what makes sense here in Washington, DC, it's what makes sense to that county. That county being in a very, very rain-soaked area, chose not to build a landfill under any circumstances. Whatcom County—I lost my script and my lawyers are going to beat me. But without flow control, the county can't direct waste to those types of facilities. Instead, the waste flows naturally to the cheapest handling method. Small companies like ours will be hurt. We're still the one—we're the ones left holding the bag, and I'm asking for your questions.

[Mr. Bell's statement may be found in the appendix.]

Mr. WAMP. Thank you, Mr. Bell. One question I have is, you referred to the H.R.1085 and everyone—from Mr. Perry's comments on local authority, the notion again of grandfathering comes up. Can each of you give us your perspective on what is a fair compromise here with regard to the grandfathering, narrowing, grandfathering and try to define what you think the proper outcome should be?

Mr. BELL. From a business perspective? We want to pay back our debt and then we'll compete. The level playing field is what we're looking for. In this flow control ordinance that I have seen, you talk about bonds. But I don't think you recognize the fact that there are

those of us that use private institutions for our funding and we don't have bonds. We have bankers.

I'd gladly move to a transfer station if that's what the direction was. If Government would have stayed out of it to begin with, we wouldn't be in this position. They got themselves in a hole, they put themselves in a bind, they looked to the private industry to bail them out, which we did. We spent our capital to do it. We've got to get back to that.

Mr. WAMP. Mr. Perry, does grandfathering get to your concerns over local authority or not.

Mr. PERRY. Not particularly, sir, in that California is just now putting those facilities together and the dates that I have seen for narrow and for broad grandfathering, we've missed both those dates. But we still have a State-mandated diversion goal that we have to make. More and more in our contracts and franchises, we're being held liable versus the city or the county that we're contracting to.

Mr. WAMP. Mr. Felix, if I were you, I would probably want to respond to Mr. Perry's response. Would you like to say something.

Mr. FELIX. Well, I think there's a couple of issues here. I think prospective flow control's clearly inconsistent with a free market economy, and I don't think that would be necessarily an alternative. I think if we look at the genesis of flow control; why do we have flow control? We really have flow control as a legalistic mechanism to insulate the downside financial risk incurred by Government entities that went ahead and built and funded through bonds facilities.

That's real. I mean, this is a real issue. But it's not as pervasive and widespread as one is led to believe. I would think, Congressman Wamp, that if an effort were made to look at specific facilities that are in fact in place and running and they were funded by a bond effort that really do may run the risk of a derating, and then insulate that for some period of time for the bond, I think that would be fate.

But anything outside of that, I think, is overreaching and too broad. What the legislation says out of the subcommittee and the Commerce Subcommittee, basically it covers anybody who had a plan to put a facility up. So, I think if the committee could focus on that, I think that we all might find that there is a solution and an opportunity to execute that solution.

Mr. WAMP. Other comments?

Mr. BELL. Yeah, I would like to echo that. We'd go head to head with guys like this if left to the free market once we get our debts paid off. My only comment to you is make sure that you handle those of us who have private obligations the same way you would those that have public obligations.

Mr. FELIX. Well, I'd have a problem with that because I think part of going into business as a private entity is taking on the risk. We made decisions and we've taken the risk. If the risk is, if we're wrong on the decision, then we suffer the consequences of the risk. I think the issue here is not risk relative to a private entity, but risk relative to a public entity. I think that should be the focus of any particular legislation. Otherwise, you'll just have, in essence,

a Federal bailout for every company that decided to go into some business and wasn't successful. I think that really is far too broad.

Mr. BELL. My rebuttal to that is, he could come in and compete in my county. All he'd have to do is do what we do, and that was mandated by the State. The State set down the 50 percent recycling goal. They set priorities. They could compete at that level.

Mr. WAMP. Let me recognize Jack Metcalf, who is a representative from the State of Washington. Your constituent, Mr. Bell, has been holding his own up here, Mr. Metcalf. I just want to recognize your presence.

Mr. METCALF. I just wanted to see that you treat him properly.

Mr. WAMP. We have treated him properly, especially in light of the fact he flew all night long and we know how difficult it was for him to get here. As we have another vote in the House, let me say that each and every one of you are encouraged to submit follow-up testimony or any other thoughts that you have. Maybe on your way back home or from your home and your enterprise you're involved in. For the record, as a matter of fact, we would like to, without objection, agree to enter into the record for a period of 10 legislative days any further input that we have from members or our witnesses or this panel.

I understand from staff that quite a bit of input is coming in on this complex issue of flow control, and I also need to, without objection, to specifically call and enter into the record a statement submitted by Mr. Manzullo from Linda Baken, who is the chairman and president of the Illinois Restaurant Association, which I have before me, and we will submit that statement for the record. Without any further questioning, we will adjourn this meeting of the Small Business Committee of the U.S. House of Representatives. We stand adjourned.

[Whereupon, at 12:51 p.m., the hearing was adjourned, subject to the call of the chair.]

APPENDIX

SUE W. KELLY
19TH DISTRICT, NEW YORK

COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
VICE CHAIR, SUBCOMMITTEE ON RAILROADS
SUBCOMMITTEE ON AVIATION

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ASSISTANT MAJORITY WHIP

Congress of the United States House of Representatives Washington, DC 20515-3219

Statement of the Honorable Sue Kelly
before the House Small Business Committee
on Solid Waste Flow Control
September 13, 1995

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Chairwoman Meyers, I would like to commend you for holding this important informational hearing on flow control. This is an issue that many of us are very familiar with. However, I think it is important that we hear the small business perspective as this issue is further considered.

As we all know, flow control is the ability to regulate the movement of locally generated municipal solid waste and to designate those facilities at which such waste will be delivered and managed. Many local communities have exercised this authority and established comprehensive programs for the collection, treatment, recycling, disposal, and overall management of municipal solid waste.

However, last year the U.S. Supreme Court, in its decision C&A Carbone, Inc. vs. Town of Clarkstown, found that local flow control laws violate the interstate commerce clause of the U.S. Constitution, stating that solid waste movement cannot be restricted by the States without explicit Congressional authority. As a result of Carbone, all local flow control laws are no longer valid.

This decision by the Supreme Court has left many local communities in a very difficult position. Because many of these communities responsibly funded the waste treatment facilities with public bonds, many of which have not yet been repaid, they stand to incur substantial debt unless flow control is reauthorized for a period sufficient to allow them to retire their outstanding obligations.

In New York State alone, there is over \$1.2 billion in public debt for solid waste management facilities and programs which is threatened unless this can be resolved. \$43 million of that debt was incurred by the Dutchess County Resources Recovery Agency, which is located in the congressional district that I represent.

Legislation which I co-sponsored has been introduced in the House of Representatives which would restore flow control authority until outstanding financial obligations and debt, incurred prior to the Carbone decision in reliance on such authority, is restored.

The New York Association of Solid Waste Managers, a group representing thousands of local government officials and professionals responsible for managing the municipal solid waste in the state of New York, recently adopted a resolution on flow control. Their objective is to have legislation enacted as quickly as possible to restore flow control authority in order to resolve the outstanding financial obligations of many local governments. I think that this resolution is consistent with the goals of the legislation currently under consideration in the Commerce Committee, and ask unanimous consent that it be included as part of this hearing's record.

In conclusion, I welcome this morning's witnesses, and I look forward to hearing their testimony so that we may begin to formulate the best means to handle solid waste treatment and disposal in the future in a manner best suited to all interested parties.



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FOR
SOLID WASTE MANAGEMENT
Established 1975

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1977-1979

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1975-1977

NEW YORK STATE ASSOCIATION FOR SOLID WASTE MANAGEMENT**RESOLUTION ON FLOW CONTROL**

WHEREAS, the New York State Association For Solid Waste Management was founded to promote cost effective, environmentally safe and efficient solid waste management in New York State; and

WHEREAS, local governments across New York State have taken responsible action and have invested over \$1.2 billion in municipal solid waste recycling, processing and disposal facilities in reliance on State-authorized flow-control; and

WHEREAS, the existence of these local municipal facilities has provided a level playing field on which small independent carting companies can better compete against the large national and multi-national carting firms; and

WHEREAS, these flow-controlled facilities often provide small businesses with the option to deliver their own wastes thus avoiding the added expense of hiring a carting firm; and

WHEREAS, many of these facilities have been funded solely through user fees without the need for taxes that otherwise would have been imposed upon small businesses and other taxpayers; and

WHEREAS, revenues derived from disposal fees charged at these facilities allows for the creation of programs to assist small businesses such as waste reduction, hazardous waste collection and waste recycling programs; and

WHEREAS, the continued existence of many of these facilities and programs is directly dependent upon prompt Congressional restoration of municipal flow control powers; and

WHEREAS, the continued absence of flow control authority will invariably result in continued downgrading of municipal bonds (for solid waste as well as for other needed projects) which translates into higher costs for government and higher taxes for small businesses; and



NEW YORK STATE ASSOCIATION
FOR
SOLID WASTE MANAGEMENT
Established 1975

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Town of Oyster Bay

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1991-1993

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1989-1991

Charles F. Miles, Jr.

1987-1989

Michael Gopin

1985-1987

Al Albanese

1983-1985

Robert H. Roller

1981-1983

Victor H. Buckstad

1979-1981

Donel A. Devine

1977-1979

Howard F. Christensen

1975-1977

WHEREAS, the demise of local flow-controlled waste facilities will make it increasingly difficult for small local waste management companies to co-exist with larger national and multi-national firms that won their own disposal facilities, often in other states;

NOW, THEREFORE, BE IT RESOLVED, that the New York State Association For Solid Waste Management calls upon the U. S. House of Representatives Committee on Small Business to find that immediate restoration of municipal flow control powers is in the best interest of the nation's small businesses and that the Committee urge its counterparts in the House Commerce Committee to proceed immediately toward restoration of these powers.

FRANK A. LOBIONDO
20 DISTRICT, NEW JERSEY

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Congress of the United States
House of Representatives
Washington, DC 20515-3002

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SMALL BUSINESS

SUBCOMMITTEES
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TAX AND FINANCE

Statement of the Honorable Frank A. LoBiondo
September 13, 1995
Committee on Small Business hearing on
"The Impact of Solid Waste 'Flow Control' on Small
Businesses and Consumers"

I commend Chairman Meyers for holding this hearing on the impact of flow control on small businesses. This is a topic of extreme relevance and one which carries a potentially negative impact for the taxpayer should Congress not move quickly to rectify this situation.

By way of history, New Jersey has been on the forefront of solid waste management for many years. When the State first implemented flow control, there was no reason to believe that this practice would be rendered unconstitutional by the Supreme Court in 1994. Furthermore, New Jersey's system has prevailed in numerous legal challenges during the last ten years.

In the meantime, counties throughout the state constructed state-of-the-art incinerators, landfills, and transfer stations. To finance this state-mandated construction, counties took out sizable bonds, amounting to about \$2 billion.

It is these bonds which concerns me the most. Two billion dollars is still a lot of money outside of Washington. Should Congress fail to act on legislation before the Commerce Committee right now, the New Jersey taxpayer is going to be left holding

the bag.

It is important to note that the system in place in New Jersey is unique and is not, contrary to public perception, a government-run monopoly. All contracts for incineration, hauling, and landfills are competitively bid. Flow control, as it has been implemented in New Jersey, simply allows contracts for these services to be fulfilled.

Madame Chair, this issue is one of fairness and retroactivity. While it is important to set national rules that allow all Americans to seek out the best waste service for their money, I am wary of proposals which will change the rules of the game at this late stage. New Jersey state and local governments are now faced with an enormous debt which will ultimately be passed along to the taxpayer should legislation fail to pass soon.

I know that the taxpayers in other states are also at risk of having to finance this court decision. It is imperative that this situation be resolved as quickly as possible. I support compromises which may include grandfathering and eventually phasing out flow control. In the meantime, I must stand up for the taxpayers in my state and others and ask that Congress focus on the local fiscal realities of this problem.

STATEMENT OF THE HONORABLE DONALD A. MANZULLO
BEFORE THE HOUSE SMALL BUSINESS COMMITTEE
ON FLOW CONTROL
SEPTEMBER 13, 1995
9:30AM ROOM 2359 RHOB

Madam Chair, I am pleased that you are holding hearings on the potential impact of solid waste "flow control" on small business and consumers.

Flow control is the legal authority given to states and local governments to designate where municipal waste must be taken for processing, treatment or disposal. Flow control requires waste to be delivered to specific local facilities such as materials recovery facilities, waste-to-energy plants, transfer stations, landfills, and composting operations. Thirty-nine states, including Illinois, and the District of Columbia authorize some form of flow control.

Under the Resource Conservation and Recovery Act of 1976 (RCRA), state and local governments were required to develop comprehensive waste management plans to meet the environmental standards set by the Environmental Protection Agency (EPA). In response, many local governments built expensive waste-to-energy facilities, recycling systems, and sanitary landfills. To finance these new projects, many local governments issued revenue bonds backed by requirements that all waste generated within their borders be disposed of in their facilities.

However, by monopolizing the garbage flow, local governments preclude competition from lower-cost facilities or new technology for waste disposal.

Congress faces this issue again because the Supreme Court ruled last year (C & A Carbone v. Town of Clarkstown) that flow control violates the interstate commerce clause of the U.S. Constitution (only Congress has the power to regulate commerce among the several states). The Court ruled that solid waste fits into this category of interstate commerce and thus its movement cannot be regulated by the states without explicit Congressional authorization.

Last year, the House voted to allow the states and local governments to regulate flow control. I was one of the few Members to vote against that legislation. However, the bill saw no further action.

This year, S. 534, which would grant state and local governments limited flow control authority, passed the Senate last May. The House Commerce Committee is examining this issue, too.

My position has remained unchanged. Flow control is a government authorized monopoly and a hidden tax on consumers. Other alternatives exist for states and local governments to finance the obligations of their bonds such as a waste disposal surcharge as advocated by Mayor Schundler of Jersey City, New Jersey. The proper role of government is to regulate the safe operation of facilities, not to create monopolies that stifle the competitive, free-enterprise system. Flow control is the knee-jerk "command-and-control" approach to environmental policy that was the prevalent philosophy of the previous 40 years of Democrat control in the House of Representatives. It's time to empower the free market to find creative solutions to this problem instead of government mandates.

Plus, a recent study prepared by the National Economic Research Associates estimated that flow control adds up to \$14 to disposing one ton of garbage, or an increase of 40 percent. Noting that the Americans generate 200 million tons of municipal solid waste a year, flow control authorizes an indirect tax of nearly \$3 billion a year. In fact, one busy fast food restaurant could see their garbage bill go up by \$10,000 per year. Guess who pays for that? You and I as consumers. I ask unanimous consent that a statement prepared by the Illinois Restaurant Association be included for the record.

This is a complex issue, and I look forward to the expert testimony of the witnesses here before us today, many of whom travelled a long distance to be with us. Thank you, Madam Chair.

Jan Meyers
Chair, House Small Business Committee
Opening Statement for
The Impact of Solid Waste "Flow Control" on Small Businesses and
Consumers

Good Morning. Today the Small Business Committee will hold an informational hearing on the impact of solid waste "flow control" on small businesses and consumers.

What is "flow control"? Why is the Small Business Committee holding this hearing?

Flow control is the legal authority given to states and local governments to specifically designate where municipal solid waste must be taken for treatment or disposal. Without flow control, small business consumers and others who must pay to remove their waste usually have choices over who takes the trash. Without flow control, small business haulers have choices over where to take the trash.

In May of 1994 the Supreme Court decided *C & A Carbone v. Town of Clarkstown* and declared a flow control ordinance violated the interstate commerce clause of the Constitution. In effect, the Court ruled that solid waste constitutes an article of interstate commerce and its movement cannot be restricted without explicit Congressional authority.

In response to the Supreme Court decision, the House Commerce Committee is now considering legislation. On May 16, the Senate passed legislation that would grant limited flow control authority.

Earlier this year, a number of small business people and several small business organizations approached me and expressed a concern that the Congressional debate on flow control was dominated by local government and big waste company perspectives-- that there was an important need to air small business viewpoints.

I believe an important mission of this Committee is to operate as an aggressive forum for the small business community. We on this Committee often find ourselves working to be sure that the interests of small businesses are heard and represented at the table when important Congressional policies are decided. For those reasons, we are holding today's hearing.

We will hear from a number of small business witnesses today and receive arguments both for and against flow control. In May, I asked the Chief Counsel for Advocacy at the Small Business Administration, Jere Glover, for his comments on flow control legislation which he will provide today. The EPA was asked by Congress to study the issue in 1993. The Director of the Office of Solid Waste will describe their findings.

Mayor Sharpe James of Newark, New Jersey and County Commissioner Randy Johnson of Hennepin county, Minnesota, will give us the pro and con positions from the local government perspective. I felt that it was important to have this testimony in context with our small business and federal agency witnesses.

I want to thank all our witnesses for their participation today. I know many of you have come a long way. I spoke to the Chairman of the Commerce Committee before announcing this hearing to let him know of our plans. He indicated his strong interest in seeing the results of this hearing and sharing it with his Committee. My expectation is that we will package this morning's testimony with the submitted statements and send them to the Commerce Committee before the end of the month.

I also think we will learn a lot this morning. I look forward to the testimony.

Mr. LaFalce, would you like to make any opening remarks?

Testimony of Ken Bell
Vice President of Business Development
Recomp of Washington

1524 Slater Road
Ferndale, WA 98248
(206) 384-1057 Tel
(206) 384-5738 Fax

**RECOMP
OF
WASHINGTON**

To: The Committee on Small Business
U. S. House of Representatives
Washington D. C. 20515

RE: Flow Control.

My name is Ken Bell and I am the Vice President of Business Development for Recomp of Washington. Recomp owns and operates a solid waste processing facility near Bellingham Washington. The facility was purchased from the City of Bellingham in 1977 in an effort to privatize garbage disposal in the City.

So often, the debate about flow control seems to assume that flow control is merely governmental intervention which stifles competition and makes things tough for small businesses. If I can leave you with no other impression, it would be that Recomp is a small business, and we support a competitive model of flow control. We support this because, back when flow control was believed to be a basic local governmental power, we committed ourselves to providing long term solid waste processing service to our community. But now flow control is being undermined, and so is our business. We think it should be reinstated in the name of fairness and in the name of allowing local governments to do their job as they see fit, without having their hands tied by the Federal government.

Out in Washington State, the counties and the cities have the primary responsibility for making a solid waste policy. These local governments need to make sure that not only is there always someone there to take out the waste, but also that the waste will be handled in ways that make sense for the community. What makes sense for one community does not necessarily make sense for another.

In Whatcom County, where Recomp's facility operates, the local government has long favored recycling and energy recovery over straight landfilling. The County decided through it's locally elected officials, that before we bury our solid waste, we should take the useful materials out of it and then extract the energy from it. These decisions are reflected in written policies found in the County's solid waste management plan and in the County's ordinances. **These policies were reaffirmed as recently as November of 1994. (Post Carbone)**

Recomp stepped forward in response to these policies by building the capital facilities necessary to recycle the waste and get the energy out of it. Our waste-to energy facility was built in 1985 and in 1990 we added a material recovery facility and composting facility. From these integrated facilities we remove as many recyclables as possible and reduce the toxicity by removing household hazardous wastes. We then compost the organic fraction of the waste stream prior to incineration for energy recovery. In all Recomp's capital investment in these facilities amounts to nearly \$20,000,000.00. We are very small by industry standards processing about 240 tons of solid waste per day and employing only 37 people. This solid waste facility is our only business.

Whatcom county gave life to it's solid waste policies by passing a flow control ordinance. The ordinance requires waste to go to the favored processing methods or follow a hierarchy. Not simply by choosing one facility. The ordinance does not say that all waste has to go to Recomp. it says that all waste must follow a hierarchy. It is worth noting that ours is not the only solid waste processing facility in the County. We currently have two (2) waste- to - energy facilities and one transfer station permitted in our County. Three permitted facilities in a community of 140,000. We compete within our hierarchy for material and we loose material that is processed at higher levels than our facility can accommodate. We are not afraid to compete with other facilities that do what we do - process waste according to the County's policies.

We are, however, hard pressed to compete with waste companies that operate on a different playing field. These companies get rid of waste, and they do it legally, but they do less than we must do and were required to do according to our ordinance. They don't recycle, they don't compost, they don't incinerate the burnable portion and recover energy. All of these added environmental safeguards require capital.

Soon after the Carbone came down, a local company with ties to a multi-national waste company, began permitting a transfer station just down the road from our facility, a little closer to the highway. NO they don't compost nor do they send their material through a material recovery facility nor do they incinerate and recover energy. All preferred methods by our county. They do promise, however, to be cheaper.

I did not come here to extol the virtues of waste-to -energy over landfilling. You might agree or disagree on that. To me, it is not a question of what makes the most sense from a vantage point 3000 miles from where the responsibility for disposal lies. Rather, it is what makes the most sense to the County Council Members in Whatcom County, Washington. For their part, they have resolved the question. With the election of new members and a shift to the right they could have changed their minds, but they didn't. They believe that this is the way waste should be handled in our community. Local control.

Without flow control, however, the County cannot direct the waste to those types of facilities that implement the County's policies. Instead, the waste will flow naturally to the cheapest handling and disposal mode of the day. None of you own a Yugo. Ask yourselves why! It was the cheapest mode of transportation for the day, yet it did not meet your needs. The same goes for Whatcom County and Recomp.

We will be the ones left holding the bag. We stepped forward under flow control and invested private money, not public bonds, to fulfill public goals. I suspect you have heard from witnesses who have stressed the need for protecting public investments which relied upon flow control. I hope Recomp's situation will remind you that private investments made under the same conditions deserve similar consideration.



WHATCOM COUNTY RESOLUTION

CLARIFYING THE INTENT OF FLOW CONTROL

WHEREAS, THE COUNTY FLOW CONTROL ORDINANCE CURRENTLY IN EFFECT WAS ADOPTED IN JUNE 1991;

WHEREAS, THE METHODS OF HANDLING GARBAGE IS A DYNAMIC INDUSTRY WITH CHANGING TECHNOLOGIES;

WHEREAS, LEGAL ANALYSIS OF THE CARBONE DECISION SUPPORTS THE CONCLUSION THAT OUR FLOW CONTROL ORDINANCE REMAINS ESSENTIALLY VALID;

WHEREAS, THE FLOW CONTROL ORDINANCE DOES NOT CURRENTLY ADDRESS COSTS AS THEY RELATE TO THE HIERARCHY;

WHEREAS, THE FLOW CONTROL ORDINANCE DOES NOT ADDRESS THE ADDITION OF NEW TECHNOLOGIES AS THEY BECOME AVAILABLE;

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL RECOGNIZES AND AFFIRMS THE ESSENTIAL VALIDITY OF THE 1991 FLOW CONTROL ORDINANCE;

BE IT FURTHER RESOLVED BY THE COUNCIL THAT COST IS A LEGITIMATE LIMITING FACTOR IN DETERMINING THE VIABILITY OF ANY GARBAGE DISPOSAL SYSTEM AND CONCLUDES THAT A PER TON TIPPING COST SHALL BE CAPPED AT THE RATE NEGOTIATED WITH A DISPOSAL COMPANY AT THE TIME OF CONTRACT SIGNING. ANY INCREASES IN RATE FOR WHATEVER REASON WILL REQUIRE APPROVAL FROM THE COUNTY COUNCIL.

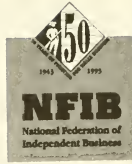
BE IT FURTHER RESOLVED THAT THE COUNTY SHALL IMPOSE A SURCHARGE OR PENALTY FOR COMPANIES NOT PERFORMING AT HIGHER LEVELS IN THE HIERARCHY. A PENALTY SHALL BE ASSESSED FOR MATERIALS SENT TO LANDFILL. THE PENALTY'S SHALL FOLLOW THE FOLLOWING SCHEDULE:

- ☒ PROCESSING OF WASTE TO RECOVER AND MARKET RECYCLABLE MATERIAL (NO PENALTY)
- ☒ PROCESSING WITH VOLUME REDUCTION AND ENERGY RECOVERY (\$2.00/TON PENALTY)
- ☒ VOLUME REDUCTION OF WASTE ((\$5.00/TON PENALTY)
- ☒ DISPOSAL WITH VOLUME REDUCTION ONLY (\$10.00/TON PENALTY)
- ☒ LANDFILLING UNSEPARATED WASTE (\$20.00/TON PENALTY)

BE IT ALSO RESOLVED THAT THE CURRENT FLOW CONTROL HIERARCHIES SHALL BE CATEGORIZED AS FOLLOWS;

1. RECYCLING OF SEPARATED WASTE:
PROCESSING NO PENALTY
2. PROCESSING OF UNSEPARATED WASTES INCLUDING COMPOSTABLES:
PROCESSING NO PENALTY
3. INCINERATION WITH ENERGY RECOVERY OF SEPARATED WASTE:
TRANSFORMATION \$2.00/TON PENALTY FOR LANDFILLED ASH
4. INCINERATION WITHOUT ENERGY RECOVERY OF SEPARATED WASTE:
REDUCTION \$5.00/TON PENALTY FOR LANDFILLED ASH
5. LANDFILLING OF SEPARATED WASTE:
REDUCTION \$5.00/TON PENALTY FOR LANDFILLED WASTE
6. INCINERATION WITH ENERGY RECOVERY OF UNSEPARATED WASTE:
VOLUME REDUCTION \$10.00/TON PENALTY FOR LANDFILLED ASH
7. INCINERATION WITHOUT ENERGY RECOVERY OF UNSEPARATED WASTE:
VOLUME REDUCTION \$10.00/TON PENALTY FOR LANDFILLED ASH
8. LANDFILLING OF UNSEPARATED WASTE:
DISPOSAL \$20.00/TON PENALTY FOR LANDFILLED WASTE

BE IT FINALLY RESOLVED THAT THE COUNTY SHALL DIRECT THE SOLID WASTE MANAGER OR OTHER PUBLIC OFFICIAL TO PLACE THE ABOVE STATED PROVISIONS INTO ANY CONTRACT AND MAKE THE ABOVE STATED PROVISIONS A PART OF FACILITY DESIGNATION.



Testimony of
John R. Broadway
NFIB Virginia State Director
National Federation of Independent Business

Subject: Flow Control
Before: House Committee on Small Business
Date: September 13, 1995

Statement by
John R. Broadway
NFIB Virginia State Director
National Federation of Independent Business

Good Morning. On behalf of the more than 600,000 members of the National Federation of Independent Business (NFIB), and 13,000 members in Virginia, I appreciate the opportunity to present the views of small business owners on the subject of flow control.

By way of introduction, NFIB is the nation's largest business organization representing a broad cross section of American businesses. About 50 percent of our membership is in the service and retail industries, about 25 percent are in manufacturing and construction, and the rest are in businesses ranging from agriculture to wholesale services. NFIB's typical member has five employees and grosses about \$250,000 in revenue annually.

Overview

The vast majority of small businesses are customers of waste disposal services. However, NFIB also represents a number of small waste haulers and recyclers. Consequently, any efforts to maintain and expand the use of flow control ordinances negatively affect small business owners. The reasons are quite simple. Flow control ordinances, which force waste disposal customers to use government-mandated waste management facilities, create monopolies under which small business owners will most likely pay higher costs and receive inferior service.

Monopolies, by their very nature, give an advantage to one entity at the expense of all others. It makes little difference whether the local government or a separate entity with a long-

term contract runs the waste disposal facility. Because monopolies do not have to face free market competition, customers have no power to bargain for better rates and service.

Concerns of Small Business Owners

Flow control ordinances have the most obvious impact on price. Currently, in communities where no ordinances exist, both large and small haulers, processors, and recyclers compete for market share. As a result, customers can purchase disposal and recycling services that are efficient, safe, and cost-effective. On the other hand, where ordinances do exist, prices are artificially set to ensure a specific payout; and, in some instances, the prices are inflated to pay for other municipal services as well. In fact, I have brought a chart with me that illustrates the findings in a recent study by the National Economic Research Associates¹ that I would like to have placed in the record. According to this study, which was prepared in May 1995, flow control will result in an average increase of 40 percent in waste disposal costs. Small businesses simply cannot afford this very real tax that flow control places on them.

This tax burden, often referred to as a tipping fee, is not inconsequential. Studies conducted by the NFIB Education Foundation indicate that typical NFIB members take out of their businesses less than \$40,000 annually to support themselves and their families. Clearly, the price of any service, and particularly one that is as non-discretionary as waste disposal, can be a significant expense for a small business. When small business owners are required to use a government-mandated disposal operation that faces no price or quality competition, they are virtually guaranteed inferior service and higher prices.

¹National Economic Research Associates, *The Cost of Flow Control* (1995).

A second impact of monopolistic flow control ordinances is inefficiency. Instead of building disposal services to respond to need, flow control ordinances result in facility-driven systems. Government-backed facilities do not need to seek business to stay in business; they are guaranteed a return on their investment. There is no incentive to improve the disposal facility, to implement new technology, or to attempt to cut costs. And there is certainly no incentive to pass any savings on to the customer. In addition, because these facilities are built without regard to market conditions, they are often oversized, built to receive volumes of waste considerably in excess of volumes projected in a free market environment.

Flow control ordinances can also negatively affect environmental quality. Small business owners want the ability to ensure that their waste is being properly disposed. They and their families live in their communities -- they drink the water and they breathe the air. In addition, under current Superfund law they face enormous liability for the waste they generate if it is not disposed of responsibly.

With respect to flow control ordinances, waste generators may be forced to send their waste to facilities that are environmentally unsafe, leaving them with potentially huge liabilities. Waste generators should be able to control their own liability and their quality of life by choosing the facility that has the safest standards.

NFIB also represents a number of haulers and recyclers. With flow control ordinances in place, it is highly unlikely that these small businesses would be able to compete for long-term contracts. They will, in effect, lose any opportunity to provide these services or fill new niches in the market as new technologies develop.

Arguments are made that counties and municipalities need flow control ordinances to plan for present and future waste management. While such planning may be desirable, there are better

ways to manage it than by interfering in free markets. It is a myth that waste management requires flow control. Such management by local governments can be performed through regulating the quality of service, not by performing it themselves or by establishing long-term exclusive contracts.

Pending Legislation

It should be clear from my testimony that small business owners do not support flow control ordinances. However, they are not insensitive to the plight of many communities that have on-going facilities in place. If Congress must pass some flow control legislation, NFIB strongly urges that only a strictly limited grandfather provision be established. Specifically, we do not believe that communities that currently have on-going programs should be destined to live under flow control ordinances into eternity. Once the currently operating facility's useful life is finished, any grandfathered flow control ordinance should end. And certainly, any community that has passed an ordinance and was merely in the planning stages of building a facility should not be protected from the free market.

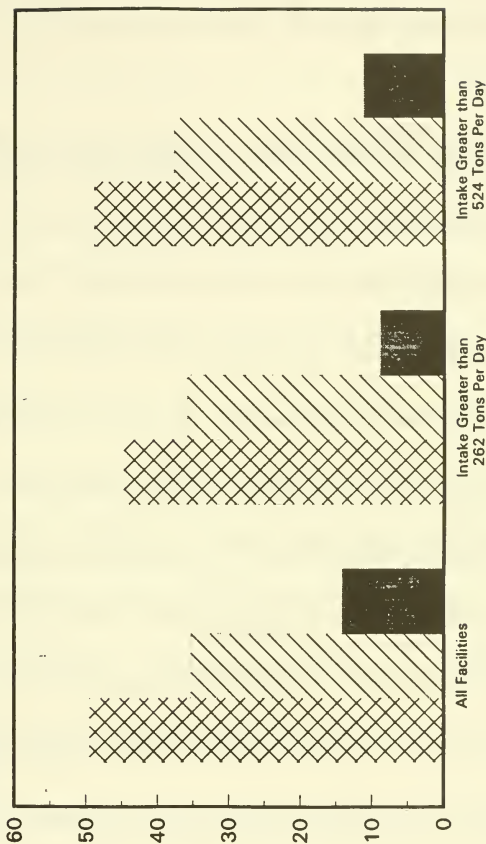
Small business owners face many hurdles in maintaining their businesses, creating jobs, and generating revenue for their communities. They should not be faced with the added costs and inferior service that results from monopolistic flow control ordinances. NFIB urges the committee to consider the negative consequences of establishing long-term monopolies that force small businesses to purchase services from a single supplier. It is not in the best interests of small businesses or the nation as a whole.



Thank you for giving me the opportunity to testify and I would be glad to answer any questions.

AVERAGE TIP FEE WITH AND WITHOUT FLOW CONTROL

Across All Types of Facilities

Dollars Per Ton



 With Flow Control
  Without Flow Control

Flow Control Cost

Good morning, Chairwoman Myers and Members of the Committee.

I am Brian Clements, President of Clements Waste Services, Inc., a small waste services business in Southeastern Pennsylvania. I am the third generation of my family to operate this business. With 40 employees and 20 trucks, we are typical of the thousands of small family-operated waste hauling companies around the United States. Companies our size haul and dispose of about 50 percent of the household and commercial waste in the United States. On behalf of the many small waste haulers in the United States -- and more importantly, our customers, who are most impacted by the high cost of flow control, may I thank you most sincerely for the opportunity to testify today.

Why do we care about Flow Control and the suppression of

interstate commerce?

Flow control is not an issue that immediately commands attention "inside the Beltway;" however, in communities across the country it has a serious and detrimental impact on virtually every household and business. Trash disposal is serious business, and its costs simply cannot be ignored.

Flow control -- the artificial monopoly created by local governments -- is anti-free market, anti-small business, anti-consumer, and anti-environment. The Supreme Court was right to strike down Flow Control, and Congress would be wrong to resurrect it.

My business operates on a simple premise. People and businesses generate trash that requires disposal. I offer, in competition with other disposal companies, to haul and dispose of the trash at a price determined by the marketplace. Competition and normal market place pressures require me to offer my customers the lowest possible price for disposal services. I must be free to lower my overhead costs whenever and wherever possible. Since disposal costs are my company's largest expense, searching for the least expensive disposal alternative is critical to my operating costs. Lower disposal costs for me result directly in lower disposal costs for my customers.

Unfortunately, Flow Control injects an artificial authoritarian force into the competitive marketplace. When local governments dictate

where trash must be disposed of, they also dictate the price. Under Flow Control, my disposal alternatives are eliminated. I can no longer "shop" for a good fee, and that means my customers are looking at an artificially established price for trash disposal.

In addition to being anti-free market and anti-competitive, Flow Control strikes at the heart of efforts to clean up the environment by encouraging incineration and discouraging recycling. Reliable data, now a part of the public record, reveals that only 2.7 percent of waste that was recycled in 1992 was subject to Flow Control, while 50 percent of waste that was incinerated was subject to Flow Control. This same data also reveals that new incinerator capacity, sufficient to increase waste incineration by 20 percent, is in the advanced planning stages. I submit

to this Committee that Flow Control promotes incineration not recycling!

I will digress here briefly to state the obvious. Incinerators are costly to build and to maintain. Bond issues follow incinerator construction plans like thunder follows lightning. Investment bankers love issuing bonds; therefore, it should come as no surprise that they also like Flow Control.

In my home county, the county commissioners hired an investment banker to draft our county's waste plan. Despite numerous appeals from the existing privately owned disposal facilities in the area to provide disposal capacity, the investment banker's plan called for the county to float bonds to build a county-owned incinerator, a transfer station, a

landfill, and a recycling facility. Only expensive litigation, in conjunction with the *Carbone* decision, stopped this crazy plan from going forward. As a result of the existing free market, the county's residents are now enjoying disposal fees significantly less than those projected under the original county plan. Not surprising, local office holders who have invested political capital in incinerator construction also find it necessary now to back Flow Control. What is always absent from their rhetoric is how much private sector investment was imperiled as a result of their actions.

This opportunity to speak out against Flow Control is deeply appreciated. It is very much a small business issue. The majority of waste haulers are small companies, often family businesses who are

extremely sensitive to marketplace changes and to competition. My company stands ready to compete and to meet the needs of my customers at a fair price.

What my company and many others in this business cannot abide is the governmental intrusion of mandated Flow Control eliminating competition, skewing market forces, and, ultimately, driving up prices.

Congress should not act to allow implementation of Flow Control. In fact, I would encourage this Committee and your colleagues in the House to take a stand in favor of a free market, open competition, lower prices, and a better environment. Please oppose Flow Control.



SANTEK
ENVIRONMENTAL

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Cleveland, Tennessee 37311
615/476-9160
Toll Free 1-800-467-9160
FAX 615/479-1952

Written Testimony of

**CHERYL L. DUNSON
LEGISLATIVE AFFAIRS DIRECTOR
SANTEK ENVIRONMENTAL, INC.**

&

F.L.O.W.

Friends of Locally Owned Government Waste

**Before The
HOUSE SMALL BUSINESS COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES**

Regarding

FLOW CONTROL OF MUNICIPAL SOLID WASTE

SEPTEMBER 13, 1995

*Landfill Partnerships
That Work.*

**WASTE FLOW CONTROL:
A LEVEL PLAYING FIELD FOR ALL SOLID WASTE PROVIDERS**

**Prepared by:
Santek Environmental, Inc.
&
F.L.O.W.
Friends of Locally Owned (government) Waste**

Local government's inability to enforce waste flow control ordinances is resulting in an unlevel playing field for public and private providers of solid waste services.

Although the federal government has placed the responsibility of providing solid waste management (SWM) planning and reduction programs squarely on the shoulders of local government, it neglected to give local officials the authority with which to implement solid waste programs that protect the health and welfare of its citizenry. This lack of authority is complicating many of local government's responsibilities including:

- Preparation of long-term SWM plans
- Compliance with federal recycling and source reduction mandates
- Securing adequate long-term financing for new facilities
- Pursuing new and innovative technologies which may cost more than land disposal
- Entering into long-term agreement with private providers of solid waste services and,
- Protection against long-term liability. Currently, state and federal legislators' primary concerns focus on keeping garbage OUT of targeted states and counties. But the same emphasis must be placed on local government's ability to maintain control of its waste streams because liability is cradle-to-grave. As

such, local officials must be afforded the ability to choose the final destination of their communities' waste.

Similarly, small-to-mid-sized private providers of solid waste services are being penalized by a lack of flow control because they are being forced from the marketplace by large, vertically integrated companies that are both haulers and landfill owners.

When local government opts to privatize some or all aspects of its SWM program, it can guarantee a level playing field by legally directing waste to a designated facility. In turn, this provides for true competition since all private providers must use the same facility and compete based on the same tipping fee.

Without flow control regulation, large companies with access to or ownership of outside disposal sites frequently offer local government discount, or "teaser" rates to lure them out of the collection and/or landfill business. Unfortunately, these rates often amount to only temporary, short-term gains. Rates usually increase and local government is a captive customer, unable to protect itself from further rate increases because it lost control of a valuable infrastructure.

In an attempt to prevent a monopoly of its 34 waste districts by one local hauler, the Town of Brookhaven, New York, bid out its solid waste collection under 34 different contracts. Unfortunately, the low bidder for 33 of the 34 bids was the same local hauler

who refused to abide by the town's flow control ordinance and disposed of the town's waste at a cheaper landfill outside the region. Thus, the hauler was able to submit lower bids than all his competitors.

A municipality's inability to implement flow control ordinances resulted in an unlevel playing field for Santek Environmental several times this year. In turn, our inability to compete dollar-for-dollar with other companies prevented the company from growing and also resulted in local government being forced to pay higher fees. Santek Environmental is a full-service constructor and manager of publicly owned Subtitle D landfills. The company currently operates several facilities located in the Southeast.

When the City of Jackson (Mississippi) chose to privatize its landfill operation, Santek Environmental submitted a bid to operate the City's new Subtitle D facility. With commitments from almost 43 surrounding counties and cities to use the landfill, the City was depending on a delivery of 180,000 tons of residential waste each year. Combined with commercial and industrial waste volumes, officials expected the landfill's volumes to significantly increase during the life of the landfill.

Based on the volume of waste delivered to the facility, Santek's proposal provided for a sliding tipping fee. As volume at the landfill increased, Santek's tipping fee decreased. At minimum volumes, Santek's proposal resulted in an annual savings to the City of almost \$1.8 million than that of the next highest bidder. For the life of the 20-year agreement,

Santek's proposal would have resulted in a savings of \$36 million. At maximum volumes, Santek's proposal would have saved the City \$1.5 million a year in tipping fees and almost \$30 million during the life of the contract.

Unfortunately, the majority of the City's and the surrounding counties' waste stream was being hauled by the higher bidder. The City was unable to guarantee a delivery of waste because it couldn't legally direct the hauler's trucks to use the local landfill. To prevent the waste from going to nearby outside facilities, the City was forced to sign an agreement with the hauler. True competition was unable to occur due to the lack of a level playing field.

Almost six months later, a similar situation occurred in Charleston, W.V.. Santek submitted a proposal to operate the City's new landfill. Santek's price was \$7 per ton lower than the next bidder. But, because a large majority of the City's waste is hauled by a private company, and because the City is unable to guarantee a flow of waste to its facility, it was forced to negotiate with the higher bidder. The other company, a publicly owned corporation, was able to financially leverage the risk and neglected to include in its proposal a minimum waste guarantee. If the City had opted to take Santek's proposal, it would have realized a savings of \$8.4 million over the 10-year contract period.

Although both municipalities speculated that the waste would come to their facilities, it soon became apparent that they couldn't guarantee a flow of waste without legally implementing flow control ordinances. Without the haulers' volumes, the cities were unable

to guarantee a minimum delivery of waste to their landfills. In essence, they were captive customers. They were strong-armed into accepting higher fees due to their inability to guarantee waste streams. In a truly competitive atmosphere, a level playing field would have allowed the cities to take the best price instead of accepting higher tipping fees for the cities' citizens and commercial customers. What would have resulted in windfall savings to the cities turned into windfall profits for large publicly owned hauling companies.

Although 26 states currently have flow control laws, many instances exist that prove flow control laws are ineffective and, often times, found to be illegal when challenged in court. Some prime examples include:

- **The City of Beaumont, Texas.**

The City owns and operates a regional landfill for Jefferson, Orange and Hardin counties. The City financed the facility through the issuance of long-term bonds on which the City continues to pay. In addition, when the landfill was permitted and constructed, waste flow control was an integral part of the City's plan to repay the debt. But, recent court actions have threatened the City's ordinance requiring waste generated inside Beaumont's city limits to be disposed of at the City's landfill.

- **Montgomery County, Tennessee.**

The Bi-County Landfill Solid Waste Management System is losing nearly

\$60,000 per month because a large private hauler is transporting a large portion of the County's waste to a company-owned landfill in adjacent Kentucky. Across the state in Jefferson County, the County's new landfill is losing 27% of its waste stream and \$15,000 a month in revenues because a large private hauler is transporting portions of the County's waste to cheaper landfills in neighboring Hamblin, Knox and Anderson counties.

- **Canadian County, Oklahoma.**

The County owns and operates a 160-acre landfill, but because eastern portions of the County are inside the corporate limits of Oklahoma City, the County is losing more than 700 tons of garbage daily to three privately owned landfills nearby. The loss of volume is resulting in an annual deficit of \$750,000 in tipping fees.

- **Winston-Salem, North Carolina.**

The City/County Utility Commission has lost 110,000 tons of garbage and \$2 million in revenues during the last three years because private haulers are taking waste to Waste Management, Inc.'s cheaper landfill in neighboring Kernersville.

- **Asheville, North Carolina.**

In neighboring Buncombe County, local officials estimate a loss of \$1.2

million in yearly disposal fees (approximately 30% of its budget) and 32% of its waste stream when Waste Management begins trucking the County's waste across state lines to its private landfill in Spartanburg County, South Carolina.

- **Hardin County, Kentucky.**

The financial success of the County's new landfill is in jeopardy because two large haulers are gaining greater control of the local garbage business. The haulers now control almost 200 tons per day of County waste and only a few independent haulers remain in the collection business. Mr. Asher said the County is "absolutely dependent" on the its flow control ordinance which has been legally challenged.

- **Kane County, Illinois.**

Revenues at the County's landfill are \$1 million less than anticipated because the landfill operator lost a hauling contract to a major competitor and 38,000 tons of the County's waste is now being hauled to an outside facility. Unfortunately, under the terms of the agreement with its landfill operator, the County must pay \$18.39 per ton for every ton of waste below the guaranteed minimum.

- **City of Mobile, Alabama.**

The City lost almost \$2 million per year when Waste Management pulled out of Chastang Sanitary Landfill to feed its private landfill in neighboring

Mississippi.

- **Metro-Dade, Florida**

The County is losing \$20 million in annual tipping fee revenues because the City of Miami is burning its waste in a private waste-to-energy facility in neighboring Broward County. Broward County residents' rate of \$76 per ton makes it easier for the facility owner to pursue other markets like cities in Dade County which are assessed a \$42-per-ton tipping fee.

- **Richmond and Columbia counties, Ga.**

A large waste conglomerates transfer station will cause Richmond County to lose 40% of its waste stream and an estimated \$2-\$3 million in lost revenues. Columbia County will lose 20% of its waste stream and \$500,000.

These brief scenarios represent how local government's inability to enforce flow control ordinances is crippling local infrastructures and is preventing all providers of solid waste to compete for business. Solid waste has become an unregulated utility monopolized by a select few.

The answer is flow control legislation. Arming local government with the legal right to enforce flow control ordinances will result in a level playing field for all providers of solid waste services - both public and private. A level playing field provides for true competition and that benefits all Americans!



Private haulers Jay Brown and Sarah Solomon (left), Gary Deaver (center) and Tony Blessitt (right) support flow control.

Small Haulers Struggle To Survive *Carbone*

By Cheryl L. Dunson

■ Almost a year has passed since the Supreme Court ruled flow control unconstitutional. As a result, only the strongest will be able to survive the fierce competition in the marketplace.

Jay Brown and his partner never realized the gamble they were taking when they opened the doors of J&S Dumpster Service. Since its inception six months ago, the Winston-Salem, N.C.-based company has yet to haul any waste to the county landfill.

If area waste haulers begin to transfer city waste to facilities in neighboring counties, the local government will lose more than \$1.4 million in annual tipping fees at its site. As a result and as a means of self-preservation, Winston-Salem will award franchise agreements beginning this July. The information gathered from the franchise applications, such as the percentage of wastes expected to be brought to the local landfill, reportedly will help city officials prepare for the future.

Brown's business can't grow without a guaranteed territory. While the city deliberates to whom it will issue franchises, Brown has put his new business on hold for fear of investing heavily in equipment that may never

be used. "If we were all on the same level, there'd be no comparison in my rates and [the large privates]," said Brown, a 14-year veteran of a large waste conglomerate. "I would not have to worry about them hauling [local] waste to their out-of-county landfills at a cheaper price. I'd tear 'em up."

Out of the four local companies applying for a franchise, J & S is the "only small one in the bunch," said Dan Miles, the solid waste administrator for the Winston-Salem/Forsyth County Utility Commission.

A Nation In Transition

From California to Delaware, some haulers are realizing that they might be muscled from the marketplace if they don't own landfills. Further, local governments can no longer control waste streams.

Yet, many are discovering that flow control — or the lack of it — may mean the difference between laying off employees and keeping trucks on the road.

In Springfield, Mo., the city's largest independent, Sparky's Waste Control, has 13 employees to service 7,000 customers. Owner Gary Deaver, a college chemistry major who formed Sparky's 25 years ago, said that he can't compete for large-volume accounts because of the difference in tipping fees at the city's landfill and the private haulers' neighboring facilities.

The city government supports its waste reduction and recycling programs through tipping fees at its landfill. "The lack of flow control is impacting my company's ability to compete with the vertically integrated companies," Deaver said. "It's impossible for me to land any large-volume accounts. [The large privates offer] lower tipping fees which make their costs lower than mine. It actually makes me look bad when I bid."

To compensate, Deaver, who is a member of several local industrial development and environmental boards, said his company relies on civic commitment and strong community ties. "We've stressed value-added service and community responsibility. Growth isn't phenomenal, it's one account at a time."

In light of the Supreme Court's *Carbone* ruling, which declared flow



Bill Dobert is C.F.O. of a hauling company in Sunnyvale, Calif.

control unconstitutional, other municipalities, such as Sunnyvale, Calif., also have resorted to franchise agreements to manage their solid wastes. Bay Counties Waste Services Inc., for example, is a licensed franchised hauler for Sunnyvale's commercial and residential waste. The city also contracts with private companies for transfer station and landfill services.

California's stringent waste reduction laws have turned solid waste into a technologically sophisticated business, said Bay Counties' C.F.O., Bill Dobert. "What happens to the government contracts and bonds

when there's no waste coming to their facilities? [That's why] franchising is unique to this area. An estimated 90 percent of the cities from Northern California to Oregon have franchises. There's security in having a franchise. There's no way to rationally organize a solid waste system without [flow control]," said the former corporate banker.

Flow Control Fans

The Delaware Solid Waste Authority requires all haulers to have a collector's license which stipulates that all waste must be disposed at one of the authority's three landfills or its transfer station. Besides disposing of all Delaware-generated waste in-state, haulers also agree not to import out-of-state waste.

"We've had flow control since I can remember," said Alan Tolliver, general manager of Robert Tolliver Inc., Newark, Del. "We like it because it puts everyone on equal footing." Tolliver's 35-year-old, family-owned-and-operated business is one of 10 hauling companies which serve approximately one-third of the state.

Flow control regulations were the result of the Authority's attempts to secure financing in the bonds market during the late '70s, according to Authority officials who also say that, despite problems such as the *Carbone* ruling, an unsuccessful lawsuit and a few minor infractions, their program works.

Although Tolliver admits the authority's tipping fees may not be the cheapest, he says that everyone benefits from the programs funded by the fees.

"Flow control helps the authority to make plans," Tolliver said. "I've never really thought of it as anti-competitive, I just see how it helps our area. [With flow control], none of the haulers have to worry about a competing transfer station or a cheaper out-of-state landfill. Everybody pays the same rate."

Harold Hill, the owner of Heartland Enterprises in Davenport, Iowa, says flow control directly impacts his ability to compete with the large privates. Heartland collects waste in Scott County, Iowa, where flow control is implemented through an intergovernmental agreement between the county and 14 local municipalities. Hill also collects waste in Illinois, where he disposes of waste at one of three private landfills.

By signing Scott County's "28-E Agreement," municipalities delegate their respective powers to the Scott Area Solid Waste Management Commission (SASWMC) to manage all aspects of the county's MSW program, including final disposal.

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Flow control impacts Hills' ability to compete with large, private haulers.

All SASWMC services are funded by the landfill's tipping fees. "The lack of flow control hurts me real bad when I'm competing for communities that aren't a part of the 28-E Agreement," said Hill, who must compete with eight other haulers for municipal contracts. "It's much better when it's in the contract to use the same [landfill]."

SASWMC is aware of the hauler's plight. "[It's a challenge for] our small haulers to stay in business," said SASWMC's executive director. "We have several major haulers in our area and, because of the flow control issues, we've been very cau-

tious not to burden our landfill fees," she said.

Forty-five minutes south of Louisville, Ky., Tony Blessitt says he considers himself to be competitive if he ends the day without losing a customer. The 35-year-old general manager of Kosmosdale Sanitation represents the only family-owned hauling business left in Radcliff. All the others reportedly have been acquired by large conglomerates or are out of business.

Hardin County, along with Blessitt, will continue to use out-of-county, privately-owned landfills until the county's new facility is constructed later this year. The county's exclusive franchise agreement specifies that all residential waste collected in unincorporated portions of the county must be disposed at the \$8 million landfill when it opens. A nearby landfill owner is contesting the agreement in court.

Blessitt says he'll support the county's new landfill, but admits flow control would make the market more equitable for all haulers.

The flow control issue has to do with attitudes, according to John Paul Jones III, executive director of the Washington Refuse and Recycling Association (WRRA).

"Out here, families have been in business since the turn of the century. They're fiercely proud and have a strong entrepreneurial spirit," he said. "But [solid waste management] is a process and the best way to do it is by working together."

Jones said WRRA's membership, a mix of solid waste handlers, "generally supports flow control as a way to pay for facilities. They've been instructed to work with local government. We've never had a member challenge a flow control ordinance. Nor do I expect one to," he said. "In Washington, local government designs the plans and they're carried out by public and private interests in a cooperative fashion. That's the significant difference: attitudes."

Across the country, in Winston-Salem, Brown stays afloat by servicing commercial office paper recycling accounts as he anxiously awaits word on his franchise license, which will determine the fate of his young company's future.

"Without a license, Brown or anyone else won't be able to collect commercial waste in Winston-Salem," explained Dan Miles of the Winston-Salem/Forsyth County Utility Commission. "Ideally, flow control would have solved this problem."

Cheryl L. Dunson is the director of marketing for Sanitek Environmental Inc., Cleveland, Tenn.

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Testimony

of

Paul M. Felix

President, Container Corporation of Carolina

Before

The House of Representatives

Committee on Small Business

September 13, 1995

Madam Chair, thank you for holding this hearing on the issue of flow control to look at the impact Congressional action could have on the small business community - those in the waste disposal business and our many small business customers.

My name is Paul M. Felix. I am President of Container Corporation of Carolina, a privately owned and operated solid waste collection and transfer company located in Charlotte, North Carolina, with operational divisions serving North Carolina, South Carolina and Georgia. Container Corporation has been in business as a collection and transfer company for 25 years, providing collection services to a wide array of commercial, industrial, institutional and government customers. Container Corporation provides employment and support for over 300 people and their families living throughout the Carolinas and Georgia. We are proud to be an active part of the growth and prosperity of a company founded on the principles of America's free market economy, which enables a company to start humbly, grow and provide jobs and opportunities for Americans without obtrusive and obstructionist intervention from government at any level.

Flow Control

What is flow control and why is it a national issue? Flow control is the legal authority given to states and local governmental entities to designate where municipal solid waste must be taken for processing, treatment and disposal. Flow control requires waste to be delivered to specific facilities such as waste-to-energy incinerators, landfills, transfer stations, recycling facilities and composting operations. Thirty nine states and the District of Columbia have authorized flow control. With the passage of the Resource Conservation and Recovery Act of 1976 (RCRA) requiring state and local governments to develop comprehensive waste management plans to meet the minimum environmental standards established by the Environmental Protection Agency (EPA), many state and local

governments adopted ordinances to control waste stream. In controlling the waste stream and to assure the availability of disposal space, some local governments either authorized companies to build or themselves built, expensive incinerators, recycling systems and sanitary landfills without regard to the ultimate cost to the taxpayer. To finance facilities, these local governments issued revenue bonds backed by flow control ordinances, requiring that all waste generated within their borders be disposed of at these facilities. Cost was not a consideration because of the view that other disposal alternatives would not be available. The result of flow control has been the construction and operation of facilities that have a much higher cost per ton disposal fees. In a May 1995 report by the National Economic Research Associates (NERA) on flow control these additional costs have been quantified. NERA found that flow control increases disposal costs an average of \$14 per ton or 40%.

Even with flow control mandates, the demand for disposal options led to the market place developing low cost, environmentally safe landfills and other disposal options. Last year the Supreme Court found in C&A Carbone vs. Town of Clarkstown that existing flow control laws violated the Commerce Clause of the Constitution. Immediately, disposal costs dropped and many cities and businesses were able to benefit, paying only the real costs of waste disposal - not from a monopoly-imposed artificial price.

Let me provide you with some specific information on Mecklenburg County, North Carolina, our home. The county developed a solid waste management plan in 1990 based on flow control to a BFI-owned landfill. Under flow control the County projected annual rates for disposal. In 1995 that rate was projected to be \$53 a ton. The rate is actually \$29 per ton today because flow control was never implemented and the free market alternatives were allowed to work. If flow control had been implemented, these artificially high disposal fees would be paid by the customers of the solid

waste management companies -- the local restaurants, construction companies, community hospitals, school districts and even the county itself. Container Corporation of Carolina has well over 10,000 small business customers that it serves almost daily. The hidden tax of flow control for Mecklenberg County would increase the disposal costs of Container Corporation's customers by over \$15 million annually. To personalize it even more, imagine a company disposing of 10 tons of waste per day, 5 days a week in our county. The annual increased cost of waste disposal under a flow control regime is more than \$30,000.

There are other examples of this hidden tax on customers. In certain parts of New York State where flow control exists, the disposal rate was \$150 per ton. In the last year under the free market competitive system, the rate is now \$55 to \$75. In New Jersey, a recent study found that in flow control areas the disposal costs exceed \$100 per ton of waste -- more than two and a half times the national average. After the Supreme Court invalidated flow control, the small town of Northvale was able to reduce its costs of disposal from \$100 to \$80 per ton..

Now that we begin to understand the impact of flow control on disposal costs, what are the other "costs" of flow control? Since all entities, including public facilities, are controlled by flow control requirements and must pay its increased cost, the impacts of this hidden tax on community hospitals, federal, state and local governments include higher medical costs for patients, less funds for parks and recreation facilities, and instead of higher teacher salaries and more and better computer equipment in our school systems, there are higher waste disposal fees - a hidden tax.

Flow control further compounds and complicates the efficient functioning of a free and unencumbered market by creating inequities between and among cities, counties and states who choose or do not choose to execute flow control - all of which can adversely affect small and large

businesses. For example, a small business which buys and sells flowers is located in county A, and its competitor is located in the adjacent county B, and they both serve the same market area. If county A institutes flow control and county B does not, what happens? If the small business in County A is negatively impacted by an increase in disposal fees to such an extent that it becomes uncompetitive, that small business either goes out of business or moves to the less cost restrictive county, like county B. County A, under flow control, loses a business and its constituents are out of a job. County B gains a new business and its constituents get jobs. The county analogy can be applied to situations involving states. The imposition or non-imposition of flow control could mean the difference between a major corporate relocation to one state or other.

Environmental Effects of Flow Control

In response to a Congressional request for information, the Environmental Protection Agency (EPA) determined that flow control has no environmental benefits. Flow control is not essential to assume a successful municipal recycling program nor does it guarantee any assurances that waste disposal requirements are met. With a 40% increase in costs resulting from flow control mandates, it is not cost-beneficial from any objective viewpoint.

One aspect overlooked by the EPA report was the impact of the federal Superfund law. Under today's law, any company that generates, disposes or transports a hazardous substance to a site later determined to be contaminated and listed as a Superfund site has liability for the clean-up. The fact that the site was mismanaged by the owner and that disposal was mandated under flow control law does not eliminate or mitigate against these clean-up costs. While one might say "this cannot be true," it is the law of the land. Please also recognize that hazardous substances are much broader than hazardous waste. Nail polish remover and glue constitute Superfund liability.

We at Container Corporation of Carolina take our environmental responsibilities seriously. We have established recycling programs for our customers to participate in, we dispose of waste at facilities that meet or exceed all federal, state and local RCRA rules, and we audit the disposal sites to assure compliance. We do this not only because it is the law but because we have an obligation to protect our customers. That same obligation does not exist for governmental entities that mandate flow control requirements.

Solution to Flow Control

What is the solution to the issue of flow control? As you can readily see, the primary purpose of flow control is not to improve the management of solid waste or correct environmental concerns, flow control's purpose is to fund inefficient, non-cost-effective, government sanctioned monopolies. Yet as desirous as it may be to prevent the imposition of the hidden tax of flow control to cover the costs of municipal investments in expensive waste disposal facilities, such a political decision is not appropriate, poor investments though they may have been. To assure that bond holders are made whole and to protect the bond worthiness of municipalities from these past poor decisions, we support legislation to allow the continuation of strictly limited flow control requirements in municipalities where bonding of these facilities already exist. Such authority should be limited to the existing duration of the bond for the existing facility only. No expansion of flow control beyond these existing terms should occur, such as allowing renegotiation of the bonds for a longer time period or the expansion to another facility. To allow expansion will add to the unnecessary costs to local businesses and to the taxpayer in these areas.

In summary, the hidden tax of flow control hurts small businesses; it truncates and distorts the establishment and growth of small businesses; it creates an inequity between and among cities,

counties and states by manipulating the economics of a perfectly legitimate free market structure; and, it costs people jobs. However, I recognize the political problem must be resolved, and as indicated, we will support limited flow control to assist those facilities constructed with bonds to be supported by flow control until the bonds' requirements are satisfied.

Again I thank you for allowing this important issue to receive a full and fair hearing.

STATEMENT OF
JERE W. GLOVER
CHIEF COUNSEL FOR ADVOCACY
U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

SEPTEMBER 13, 1995

Good morning, Chairwoman Meyers and members of the committee. I am Jere Glover, the Chief Counsel for Advocacy of the U.S. Small Business Administration. I am pleased to appear before the Committee on Small Business to share the views of the Office of Advocacy¹ regarding pending legislation governing state and local control (flow control) of solid waste management in their jurisdictions. The Senate has already passed S. 534, and the Commerce, Trade, and Hazardous Materials Subcommittee of the House Commerce Committee completed action on its draft on May 18. Further action by the full Committee is expected. This testimony should provide some background for those further deliberations.

Flow controls are legal provisions that allow states and local governments to designate where municipal solid waste (MSW) must be taken for processing, treatment or disposal. These controls were developed originally to ensure that an adequate income stream would be available to support the processing of MSW at the local landfill, transfer center, or incinerator. Sometimes, the fee was also designated to pay off the bond for construction of the facility, and to support other related programs, such as recycling or composting.

Thirty-nine states authorize flow control in some form. However, in C&A Carbone, Inc. vs. Town of Clarkstown, the Supreme Court ruled last year that flow control requirements were illegal in the absence of specific congressional authorization. The pending legislation is intended to provide that authorization.

We oppose the imposition of flow control, except in a carefully tailored manner to protect the interests of local governments who have issued bonds in reliance on the flow control guarantee. We join the small business waste haulers, the National Federation of Independent Business, and the National Association of Manufacturers in seeking to narrow the application of free market restrictions to the minimum necessary to alleviate potential hardship on local governments. Specifically, we believe that the provisions in the May 18th subcommittee bill go well beyond meeting this test and should be carefully tailored.

Flow Control Jurisdictions Impose Excessive Solid Waste Management Costs

Flow control has been used to allow local governments to efficiently plan for and fund their solid waste management systems. Under flow control, the small business hauler is required to use the locally mandated landfill or incinerator, irrespective of whether a cheaper landfill or incinerator is otherwise available. In general, these flow control requirements impose an unreasonable expense on small business (and large business) haulers who are denied the choice of a less expensive option for solid waste disposal.

In general, free markets are favored over government-restricted markets because of the

¹ The views expressed in this testimony are solely those of the Chief Counsel for Advocacy and may not necessarily reflect the views of the U.S. Small Business Administration or the Administration.

adverse effects on costs and competition. Regulated markets are reserved for areas where more than one service provider would increase costs, such as the local transmission of electric and natural gas. In contrast to those markets, there is considerable and robust competition among providers of waste management services.

One would expect that restricting markets would lead to cost increases. The May 1995 flow control report by the National Economic Research Associates, prepared for Browning-Ferris Industries, has quantified these additional expenses. Flow control adds \$10/ton or 33% to the average landfill disposal fee; \$11.50/ton or 23% to the average incinerator; and \$14/ton or 33% to the average transfer station fee. These are considerable sums, amounting to \$3 billion per year in excess fees on a nationwide basis.

The waste management disposal industry is composed of thousands of firms, all but a handful with fewer than 500 employees. These additional tipping fees that the waste haulers must pay is either passed along to the households or businesses or taken from profit. Larger firms can spread these additional costs over all their customers, those in flow control jurisdictions and those who are not. Conversely, smaller firms tend to operate in smaller areas, and are unable to spread their additional costs in non-flow control areas. We would expect that flow control mandates would have the effect of driving many smaller firms out of business, further reducing competition, and raising waste management costs.

Flow control hides the true costs of managing solid waste because all the costs are combined in one fee that may cover more than the disposal fee, such as for a recycling or composting program. It is a hidden consumer tax because the disposal fees are often not separated from the fees which supports the additional programs, which are normally supported by a separate fee or tax. This also creates cross-subsidies, since the additional revenue pays for services that some consumers are receiving, and others not. We prefer to prohibit flow control in order to allow the free market to lower costs to both haulers and consumers.

Flow Control Authority Should Be Authorized Only Where Necessary to Protect Local Government Bonds

While it may impose a hardship on local governments to prohibit flow control where the financial commitments have already been made, this rationale does not justify its future application. As the Environmental Protection Agency (EPA) points out, the localities have alternatives to flow control to finance their solid waste management programs, without establishing local waste monopolies. These alternatives include the imposition of taxes, user fees, and market-based tipping fees.

Flow control advocates have contended that flow controls benefit the environment. However, EPA concluded in its March 1995 Report to Congress on Flow Control and Municipal Solid Waste that flow control requirements yielded no environmental benefits. Protection of human health and the environment is directly governed by federal, state and local regulations implementing the Resource Conservation and Recovery Act, the Clean Air Act and the Clean

Water Act. These do not depend in any way on the existence of flow control. Thus, EPA concluded that flow control did not contribute to environmental protection, and that alternative solid waste management plans are available.

With few flow control restrictions in place, the recycling market for municipal wastes has witnessed exceptional growth. In fact, according to EPA, less than 3% of recycled materials are currently subject to flow control. A robust recycling market provides substantial economic and environmental rewards, because recycling results in less energy and resource consumption, and a reduced need for landfill space. Virtually all recycling companies and associations representing recyclers oppose flow control.

In addition, the existence of flow control increases the risk of Superfund liability for the transporter. A monopoly facility, unlike its competitors, has less incentive to manage the site properly. Under the Superfund law, transporters of waste to a Superfund site may be liable for cleanup costs. The waste hauler subject to flow control cannot choose which waste disposal facility uses the most sound environmental practices. Mike Shapiro, the EPA Director of the Office of Solid Waste, appearing with me today, can expound further on these environmental issues.

Despite these objections to flow control, local governments argue that their financial condition would be jeopardized by the retroactive lifting of flow controls that were established before the Carbone decision. These governments issued bonds with the expectation that the guaranteed waste flow would generate adequate revenue to pay off the bonds. Therefore, from the public policy viewpoint, it makes the most sense to limit flow control monopolies to localities where revenue bonds have already been issued. However, this argument does not apply to the future application of flow controls.

On May 18, the Commerce, Trade, and Hazardous Materials Subcommittee of the House Commerce Committee completed action on a draft bill to protect the legitimate interest of local governments that were relying on flow control before May 15, 1994, the date of the Carbone decision. In our view, this bill goes beyond protecting the governments that have issued bonds in reliance on this authority. Flow control should be limited to sites currently designated for flow control, and to the time period specified to pay off the original bonds. In order to maximize the ability of free competition to flourish, we prefer a "narrow grandfather" of flow control programs that would protect bonds that have already been issued from adverse credit downgradings.

Thank you for this opportunity to share the views of the Office of Advocacy. I am happy to answer any questions that you may have.



A Message from **Mayor Sharpe James**

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TESTIMONY OF THE HON. SHARPE JAMES
MAYOR, CITY OF NEWARK, NEW JERSEY
ON MANDATED FLOW CONTROL OF MUNICIPAL WASTE
BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES
SEPTEMBER 13, 1995



Together, we can make a difference!

Statement of the Hon. Sharpe James
Mayor, City of Newark, New Jersey
on Mandated Flow Control of Municipal Waste

Committee on Small Business
U.S. House of Representatives
September 13, 1995

Madam Chair and members of the Committee, thank you for inviting me to participate in this morning's hearing on municipal waste flow control. My name is Sharpe James, and I am the mayor of Newark, New Jersey. Newark is the largest city in the state, with a population of nearly 300,000, but I am here today on behalf of the Mayors' Task Force for Lower Taxes, to reflect the opposition to mandated flow control expressed by the mayors of 175 New Jersey cities and towns, large and small, representing more than 3 million voters.

You have already heard today from small businesses who, like other consumers, are forced to pay excessive rates to dispose of their trash. I am here to tell you that cities -- just as much as their citizens -- are victims of flow control. As the mayor of a major city in a state with the highest waste disposal fees in the nation, I have seen firsthand how flow control can adversely affect a city in many ways.

As you know, last year in the case *C & A Carbone v. Town of Clarkstown*, the Supreme Court held that flow control represents unconstitutional interference with interstate commerce. Prior to that decision (and indeed, continuing to this day), New Jersey used flow control authority to establish county government monopolies called "improvement

authorities" -- another layer of patronage personnel that can dictate to mayors where they must take their garbage and at what price. As a result, the cost of waste disposal in New Jersey is the highest in the nation, approaching \$100 a ton on average and higher in several instances -- three times the amount paid in most other states and double the rate charged at readily available private disposal capacity.

The authority for flow control in Essex County, where Newark is located, came into existence in 1987 when the then-governor instituted an Emergency Waste Flow Executive Order, requiring that all solid waste in Essex County be directed to the Essex County Resource Recovery Facility, located in Newark. The immediate effect of this mandated flow control was a dramatic increase in disposal costs, to \$103 per ton for municipal solid waste and \$109 per ton for bulk debris. Prior to this mandate, Newark had been disposing its waste in a nearby facility in another city for approximately \$25 per ton. With flow control in place in the county, Newark began paying four times as much for waste disposal as it had prior to the governor's executive order.

I am now confronted by the ridiculous situation of paying almost 50 percent more to dispose of solid waste than does our neighbor, New York City -- which uses a disposal facility located inside our city limits! In Newark, in Jersey City, in Paterson, and in the other towns and cities represented by the Mayors' Task Force, we cannot afford to waste our scarce financial resources. We need an escape hatch from the sinking ship called flow control.

Every unneeded dollar that our cities spend on trash is a dollar that we must raise from our hard-pressed citizens and businesses, a dollar that we must divert from maintaining our streets, fighting crime, and redeveloping our community. And for what? To support inefficient, overpriced, and duplicative facilities that cannot compete in a free and open market.

You know, solid waste and recycling facilities are not generally sited in suburban communities. They are found in older cities like Newark, Camden, Trenton, Elizabeth, and Paterson. The city of Newark is now host to numerous solid waste transfer stations, recycling centers, cogeneration plants and a major resource recovery facility. There are operating transfer stations in Newark which can dispose of construction, demolition and bulk debris for \$65 per ton, because they can recycle 50 to 90 percent of these materials. The State of New Jersey and Essex County make every attempt to force haulers to utilize their far more expensive transfer stations because of unnecessary waste flow mandates. These mandates interfere with the market and are an unconscionable burden to place on taxpayers.

I doubt that there is much on which Grover Norquist and I would agree. But I stand foursquare with Americans for Tax Reform when it says, "A vote to reinstate the practice of flow control is a vote to raise taxes." [and] "Flow control is nothing more than a trash tax."

It is obvious that when government in effect creates a monopoly, costs only spiral upward, to the detriment of its citizens. Competition is what made this country the great

entrepreneurial industrial nation that it is. The breakup of the virtual monopolies held by AT&T and IBM demonstrated that the benefits of competition to consumers. It caused both companies to trim the fat in their operations and to recognize that no guaranteed profits exists unless they compete. I believe that competition and innovation are what is needed in the solid waste industry and not the governmental franchising of new monopolies. Innovation and competition will provide new businesses, jobs, and a tax base -- and who knows what new and innovative methods can accomplish in both the solid waste and recycling areas, provided they are not stifled by needless governmental interference.

The effect of flow control on small business is damaging in at least two ways -- first, the obvious one of increasing the cost of doing business in a competitive marketplace, and second, serving as a barrier to entry to the market for companies that wish to recycle and dispose of waste:

- Trash hauling is one of the few businesses open to an entrepreneur with little more than a truck and ambition, regardless of whether he has an advanced degree or bank financing. Flow control, used to support large centralized projects, tends to consolidate the industry and can freeze out the small hauler who lacks the bonding capacity needed to compete with the big boys.
- Flow control also locks up the trash supply for decades, at a time when new approaches are emerging every day to recover and reuse the resources

contained therein. The New Jersey Environmental Foundation, representing all of the state's major environmental groups, has concluded that government control of waste disposal stifles "technical innovation, private investment, and market development for lower-cost environmentally preferable material recovery and composting technologies."

Ladies and gentlemen, we have heard a lot about the need to preserve county credit ratings -- the need to pay off bondholders who have financed these facilities. Let me just say this in response -- the adverse effects of continuing flow control far outweigh the costs of letting it die. The money saved by New Jersey citizens through lower costs for trash disposal easily offset the costs of refinancing and paying off the bonded indebtedness dependent on flow control. Why? Because counties, unconstrained by competition, have used their monopoly powers to turn trash fees into revenue-raising slush funds that support their bureaucratic and political pork-barrel empires. A study performed by KPMG Peat Marwick found that New Jersey could pay off all of its outstanding debt on solid waste disposal facilities at a cost of \$10.25 to \$12.67 a ton over 10 years, or \$7.10 to \$10 a ton over 15 years -- even as municipalities and citizens save up to \$40 a ton on disposal costs.

Is this a problem simply for New Jersey? No. If flow control is such a good thing for Hennepin County, Minnesota, represented by the other witness on this panel, why is Susan Young, director of solid waste and recycling for the city of Minneapolis, a member of the steering committee of the group Local Officials Opposed to Monopoly? Here's what they have to say:

"Experience with flow control shows that it seriously interferes with the ability of local governments -- those accountable to our citizens -- to provide environmentally productive, cost-effective solid waste management services, to respond to the needs of our residents, and to protect our residents from future liability. Flow control is an invasion of home rule and an onerous unfunded mandate."

Madam Chair, I ask your support in halting this misguided rush to restore powers to counties that they should never have had. As you well know, communities in Kansas don't require any new authority to dispose of their trash. States and localities throughout the nation have found many other ways to address their solid waste problem without resorting to the heavy hand of government monopolies. I urge you to communicate with the Commerce Committee and the House leadership that flow control is a bad idea and unnecessary, and legislation to extend it should be dropped -- or, as my colleague Bret Schundler put it, buried "in the trash heap of discarded ideas."

Thank you for the opportunity to testify today.

Madam Chairwoman and members of the Committee: I am Randy Johnson, Commissioner of Hennepin County, Minnesota, and Second Vice-President of the National Association of Counties.

NACo is the only national organization representing county governments and our membership includes the vast majority of county governments throughout the United States. My testimony is presented on behalf of ourselves, as well as the National League of Cities. Together, NACo and NLC represent over 3000 counties and 15,000 cities and towns - the vast majority of county and municipal governments in this country.

We appreciate being invited to participate in this hearing, although we are distressed by the apparent imbalance on the panels today toward anti-flow control witnesses. Nonetheless, we are confident that a thorough review of the issues will lead to the conclusion that solid waste flow control has provided, and continues to provide, numerous benefits to small business as well as the citizens in our communities.

Background

In 1993 Americans generated over 207 million tons of garbage and trash; that includes trash from residential, commercial, and industrial sources. Approximately 65% - 80%, depending on whose estimate is used, was disposed of in county and city solid waste landfills. Curbside recycling was once confined to only large urban cities. Now it is routinely provided in suburban and even rural areas of the country. Most of the 5,000+ curbside recycling programs are directly operated or contracted by local governments. Thousands more recycling drop-off programs are provided by county and municipal governments. There are now nearly 3,000 facilities composting yard trimmings - primarily leaves, grass and brush - again provided or arranged for by local governments.

Why are local governments so closely involved with solid waste? First of all, because our citizens expect their local officials to provide certain basic services. Few, if any, responsibilities are more fundamental to local government than managing locally generated solid waste. Safe garbage disposal facilities, along with roads, sewage treatment plants, and jails, are a part of the basic infrastructure of our communities. Without them, economic development for the business sector cannot occur and health and safety of our residents cannot be guaranteed.

In addition, public solid waste systems were built in response to overwhelming problems stemming from the old way of "managing" waste. The public demanded that old unsafe landfills be closed, even if it was cheaper to continue using those sites. The public demanded that their waste be put in safe places so that they wouldn't get a landfill cleanup bill in 10 or 20 years.

The public demanded that waste volumes be reduced and recycling programs be instituted. They said stop dumping waste oil in ditches and along fence lines. They said we should remove pesticide residues from in the waste, along with batteries and paint.

* Elected officials at every level heard these environmental pleas and they enacted laws and regulations to change the way America managed solid waste.

In several states counties are required by state law to handle garbage and trash. In 1976 the United States Congress, in the Resource Conservation and Recovery Act (RCRA), mandated that state governments prepare and put into effect comprehensive solid waste management plans. As is typical, states simply passed the mandates of RCRA planning, as well as additional state mandates to implement those plans, down to the next level of government - counties and cities.

Forty-two states established recycling and/or waste reduction target rates, to be met by legislatively mandated deadlines. The responsibility for meeting these deadlines

fell, and continues to fall, not on the private sector, but squarely on the shoulders of county or city government.

In addition, 44 states adopted bans on the disposal of specific materials in landfills and incinerators, leaving recycling or reduction as the only option generally available to local governments who manage the solid waste systems.

State Mandates and Flow Control

Local governments did not ask our governors and state legislatures to “devolve” solid waste management to counties, cities, and solid waste authorities. We did not ask for mandated recycling goals. Local elected officials felt perfectly competent to develop our own unique programs for reducing waste and cleaning up the environment; after all, we were responding to our citizens as well. We did not seek restrictions on what could and could not be placed in our landfills and incinerators. And we certainly did not ask for the privilege of taxing our citizens for the cost of carrying out federal and state environmental priorities.

Nevertheless, we got a full complement of state mandates regarding solid waste. To carry out these mandates we asked for the tools to carry out our responsibilities. In response, approximately 32 states allowed their political subdivisions to utilize one of these tools - “flow control” - the legal authority to direct where solid waste is to be delivered. Flow control gave those communities that opted to use it the flexibility to design a system that worked best in their area. Not every county or city decided, through their elected officials, to utilize flow control. In fact, nationwide wide, less than 20% of the solid waste stream was subject to flow control laws in 1993.

It is important to note that this permissive authority to exercise flow control was generally granted by state legislatures to the level of local government that was responsible for long-range solid waste planning and disposal. That is why it is generally

counties and multi-jurisdictional solid waste authorities that have been the most active players in the flow control debate. Those cities and municipalities that object to flow control authority should take their concerns to their own state legislatures, not to the Congress of the United States. It is state government, not the federal government, that divides up the responsibilities between city and county government. It is the state legislatures that Congress trusts to oversee all sorts of programs and services. Why should Congress - in this one area - carve out from a state's prerogatives the ability to decide how it will regulate trash and garbage? We submit that the strength of our democracy is in giving states and local governments the right to make local decisions for local problems.

Managing trash is one of those areas where states recognized the unique aspects of local government. They provided flexibility for counties and cities to experiment with the methods that worked best for their communities. Some local governments decided to totally operate the solid waste collection and disposal system themselves, either with local employees or through contracts with private vendors through a competitive bidding process. They decided to charge residents a fee or include the costs in their tax bill. In other states, the ability to charge taxes or fees was severely limited by "Proposition 13"-type laws, so alternative sources of revenue were sought.

In cases where the local elected officials decided to provide solid waste services, some communities chose to finance their programs through a surcharge on the tipping at the landfill or the waste-to-energy facility. These "solid waste user fees" were considered to be the fairest way to charge citizens for a service that is utilized in different degrees according to need, size of household, disposal habits, etc. In fact, the Environmental Protection Agency has been encouraging the adoption of user fees for solid waste collection and disposal for the last 10 years because they believe that it encourages more prudent disposal habits and reduces the amount of trash generated.

In some states, such as Iowa, New York and Pennsylvania, flow control was granted by the state legislature so that county and multi-county authorities could provide municipalities with assurance that there would always be a facility nearby that would always be there to take their garbage. This committee does not need to be reminded that the private sector is interested only in providing services that are profitable. There are still rural areas of this country where it is not profitable for private sector haulers or landfills to operate, and those areas are ignored to this day by waste companies.

In Ohio and Michigan, flow control was authorized so that solid waste districts could regulate the location, capacity and services provided by private landfills. In Florida and Virginia, and many other states, flow control was available as an option to guarantee that an adequate supply of solid waste would produce the revenues for debt-financed waste-to-energy facilities.

There are as many different variations on flow control authority under state law as there are states and the local governments within them. Again, this is entirely in line with the principles of this Congress in recognizing that the American people want governmental decisions made at the level of government that is closest to them - the state and local level - whenever possible.

Governors and state legislatures realized that by granting flow control authority, some local governments might be limiting the ability of some private sector companies to take garbage wherever they chose. But states also realized that, unless they themselves were willing to directly handle collection and disposal of trash, as well as recycling, composting, and all the other components of an integrated solid waste management system, they would have to rely upon the local governments - who in turn, were accountable to the electorate, to manage the systems fairly, safely, and at a reasonable cost.

States did not turn over this power without any strings attached. Counties and cities in every state in this country are subject to a statutory system of procurement laws, public hearings and public record laws ("sunshine" laws), and procedures for selecting the facilities and types of waste to which flow control can apply. Competitive bidding for solid waste contracts and disposal facilities is also required by law in most states. The process for establishing local ordinances - including flow control ordinances - and choosing vendors for services is a part of the traditional state-local relationship under our system of government.

Environmental Progress

Have states and local governments done a good job in accomplishing the goals that Congress sought to encourage in RCRA? The facts speak for themselves. Over 5,000 local recycling programs now operate for the collection of various recyclable materials. EPA reports that the national recycling rate for municipal solid waste rose to 22% in 1993, up from 17% just three years earlier. The rate is expected to climb to over 30% in the next five years.

There are over 175 material recovery facilities (MRF's) in operation with at least another 50 in the planning stages. These facilities separate recyclables from solid waste, thereby reducing the amount of trash that must be landfilled or burned. At the same time, the number of landfills in the United States is dropping. Recent data indicates that 17% of the landfills in this country have closed in the last year. For the first time in recent history, the number of operating landfills in the United States will likely drop below 4,000 in the next few years. It is clear that our recycling and composting efforts are making a significant impact.

In RCRA, Congress found that "land is too valuable a resource to be needlessly polluted by discarded materials". EPA subsequently declared that, in the hierarchy of a solid waste management system, landfilling is at the lowest level and should be utilized

only after all other alternatives are exhausted. Given the statistics cited above, it is fair to say that states and local governments have done an excellent job in carrying out federal policy.

Need for Legislation

We would like to remind the Congress that our solid waste management systems are entirely paid for with local, and to a very small degree, a portion of state revenues. Local governments provided over \$17.8 billion of the estimated costs of managing solid waste in this country - over 95% of the total costs. **Not one penny from the federal budget is received by local governments to plan or implement solid waste management programs.**

Why, then, should the Congress be interested in how states and local governments handle and manage solid waste? Once RCRA was passed and the state mandates implemented, what is the federal interest in our garbage and trash programs? Our view is that there is none. Unless the federal government is suddenly willing to help us start paying for these programs, generally we would prefer that you leave local decisions to us and our state legislatures.

Unfortunately for us all, the United States Supreme Court told us last year that we do need Congress' intercession for one thing. In *C. & A. Carbone v. Town of Clarkstown (NY)*, the Court said that without specific congressional authorization, our flow control systems run afoul of the Interstate Commerce Clause. According to the Court, states and local governments cannot tell waste haulers that they must use specific facilities, but that Congress has the right to do so, and if it chooses, can delegate that power to states and local governments. That is why we have been seeking from Congress for the past two years, the simple authority to continue to manage our programs under state law.

We have not asked for money. We have not asked for direction or dictates. We have not sought to pit one state against another. We have merely asked to play by the same rules that existed before some waste haulers asked the Court to interfere with the garbage and trash programs we were required to establish under state law.

Opposition to Legislation

So why is this issue so controversial? The answer is that some large national waste companies do not agree with federal policy to reduce the country's reliance on landfills. Landfills are their primary business, and if states and local governments continue to be successful in reducing the amount of trash which is landfilled, they will not make as much money. Quite simply, environmental progress in diverting waste from landfills stands in the way of the future market development plans of the national waste industry's move to mega-landfills.

So some of these national companies spread fear and myths about what we are trying to do. They argue that we are attempting to eliminate competition; and that counties and cities with flow control have artificially inflated disposal fees. They fail to tell you that the waste industry giants have profited very nicely over the last two decades while flow control has been in effect, and that many of their subsidiaries operate today under flow control without complaint.

They argue that the small businesses that haul trash will not be able to compete under flow control. In fact, just the opposite is true. Flow control systems enable many small trash haulers to survive and flourish. By entering into long-term contracts for disposal and paying the same disposal price at the designated facility as every other hauler, small haulers are able to compete against the large vertically integrated waste companies that own their own mega-landfills, transfer stations, and trucks. Flow control has provided a "level playing field" for the small haulers knowing that they will have a place to dispose of waste at a set price, rather than at prices controlled by the industry

giants. There are hundreds of small trash haulers who benefit from flow control and want it to continue.

There is already strong evidence that the future of small businesses in the solid waste market are in jeopardy. The January 1995 issue of *World Waste* reported that since 1990 the two largest waste companies in the United States - Browning Ferris Industries, and Waste Management, Inc.- acquired 1,000 smaller waste companies. This trend is continuing at a record pace. One of these companies reported that in 1994 alone, it acquired 115 additional small waste companies. Their annual reports indicate clearly that their business goals are to continue to achieve that level of acquisitions each year. If local governments are completely removed from the management of solid waste, the giants of the industry will continue their march toward a cartel of companies that can manipulate the marketplace and control prices. Flow control authority can help to preserve smaller waste hauling companies by helping them compete effectively with the largest companies in the industry.

With regard to the costs of solid waste "disposal" in flow control jurisdictions, more misinformation has been spread by some of the large national companies. The integrated solid waste management system provided by most cities and counties involves many different services, not just burying trash in a landfill. Integrated systems generally consist of recycling, household hazardous waste collection, composting, battery collection, long-range planning, consumer education about source reduction, as well as waste disposal. We have an example to show you from New York State. You will notice that the actual cost of merely disposing of the waste is less in the county using flow control. The overall fee is higher only because it covers these other environmental programs designed to reduce landfilling.

We do not deny that these integrated systems cost more than merely burying the trash in the ground. However, as was mentioned previously, most of these services are mandated by state law to be provided by local governments. The private landfill is under

no similar mandate. It is no wonder that it can charge a cheaper fee - it is providing only one piece of the system. When local government disposal fees are more expensive than those of the private sector, it is because the revenues from those fees are subsidizing the non-moneymaking parts of the system - the recycling, composting, consumer education, and other mandated programs.

It is not that the private sector is any more efficient than the public sector - we know this because so many local governments contract out virtually all of their collection, disposal and recycling programs to private operators. If there is a disparity between the disposal fee at a private landfill and a public one, it is because to meet state mandates and encourage innovative waste disposal practices, the local government has costs that the private landfill does not have to pay. It is as simple as that.

If flow control disappears immediately, local governments will need to quickly rethink the development of their long-term solid waste management plans. Lacking any predictability of volume, counties and cities which rely upon flow control will be unable to fulfill their legal responsibilities or meet the state-mandated recycling goals. For these environmental programs are to continue, there is only one other method of paying for them - local taxes. Small businesses, along with residents, will pay either way.

In short, without the local government option to use flow control, we put in jeopardy the progress we have already made in this country in diverting solid waste from landfills. Just as importantly, we put in the hands of an increasingly smaller number of waste disposal companies our communities' ability to control the way we manage our trash, and ultimately, our future development of our counties and cities.

Why flow control authority is important to Hennepin County, MN

As a conservative Republican county commissioner, I fully support private enterprise and profitability. Our Hennepin County system is squarely based on private

enterprise providing the vast majority of our solid waste management services. We decided back in the 1980's that, for environmental reasons, we did not want to rely on landfilling as a primary means of waste disposal. After an exhaustive evaluation of all the alternatives, we decided to develop a waste-to-energy facility as part of an integrated system emphasizing waste reduction and recycling. We knew that this technology would be a more expensive alternative and that we need to assure a vendor that there would be enough revenues to pay off the bonds that would be necessary to construct a plant and provide the service. We went through an RFP (request for proposals) process and selected private vendors to build and operate the facilities.

The cities within our county use a variety of methods to collect waste. Some license any hauler that can pass a safety inspection and provide a performance bonds. One city in my county licenses 50 different small haulers. Other cities competitively bid out collection routes and award the routes to the lowest responsible bidder. The only role the County plays is to require that the city haulers bring the waste to the designated facilities for disposal. In our case that means that the trash is delivered to one of two privately-owned and privately-operated waste to energy plants.

Flow control is a fundamental tool that has allowed Hennepin County, as well as the municipalities within it, to implement our local decisions on how to manage our solid waste. This has included not only the waste-to-energy plants, but also a comprehensive system that addresses all components of solid waste management - waste reduction, reuse, recycling, composting, combustion with energy recovery, and landfilling. It takes all of these to have a successful program.

Those that oppose flow control have a much narrower and short-term focus - disposal of waste at the best price available today without the long-term financial responsibility of an integrated system. My constituents naturally are willing to pay to have their trash taken away, and all other things being equal, they want the best price that they can get. But many of the state-mandated solid waste management services cannot

produce any revenue, and instead pose substantial expenses for our county. Examples of this include recycling, household hazardous waste collection, battery collection, and educational programs. Flow control allows Hennepin County to generate the funds required to support these programs without having to rely on property taxes.

Legislative History

We have understood that we faced an uphill battle to obtain legislation permitting flow control. Recognizing the enormous political resources of the national waste companies, we have attempted to try to work with them to draft a bill that accommodates some of their concerns while still trying to protect the communities we are sworn to faithfully represent. Beginning in November of 1993, before the U.S. Supreme Court had issued its *Carbone* decision, we worked on legislation in the Senate to try to codify flow control authority for all the states that had granted such power to their political subdivisions.

We quickly learned that, in the face of waste company opposition, the Congress was unwilling to simply “devolve” broad authority to states and local governments. Despite all of the rhetoric regarding letting states and local governments manage our own affairs, Congress seemed unable to overcome the opposition of the national waste companies to a broad flow control statute.

In *Carbone*, the Court held that local governments could not require private companies to use the solid waste facilities designated by the town and supported by the town’s debt. Significantly, in that decision, Justice Sandra Day O’Connor concurred that while states and local governments did not have independent authority to limit transportation of garbage, it was clearly within Congress’ power to regulate trash companies, and delegate to states and local governments the authority to exercise flow control. She observed that Congress, in adopting RCRA, had apparently intended to

leave to the states the decisions regarding solid waste issues, but had not specifically stated such in the legislation. The opinion reads:

“It is within Congress’ power to authorize local imposition of flow control. Should Congress revisit this area, and enact legislation providing a *clear indication* that it intends States and localities to implement flow control, we will, of course, defer to that legislative judgment.” (emphasis added)

After the Court’s ruling, there was sympathy by House and Senate members with the plight of local governments who had made investments in solid waste facilities, but there was little appreciation that the debt-financed facilities were just one component of an integrated solid waste management system. Therefore, we began a long series of negotiations with the national waste companies, making concession after concession, until we were left with a bill at the end of the 103rd Congress that allowed flow control for only a narrow segment of communities in this country.

During the very last week of that session, we ultimately endorsed a bill which represented a consensus among the national waste companies, along with that of the financial community, the recycling industry, the forest and paper industry, and states and local governments. That bill passed the House of Representatives unanimously, and failed in the Senate due to for a single senator’s opposition..

When the new Congress took office, we discovered that the some of the national waste companies had no intention of maintaining their prior commitment to support a consensus bill. While we have been willing to discuss more limited legislation, their efforts have been directed toward turning the debate into a “public vs. private” battle; to an ideological disagreement about the role of government in *vis a vis* providing services to citizens

The Senate, in May of this year, passed S. 534 which provides a very narrow form of flow control for those communities that had facilities that were operating on the date that the *Carbone* ruling was handed down. That flow control authority is strictly circumscribed, and is "sunsetting" when bonds are repaid, contracts end, or the facility's life is ended. Under the Senate bill, no new flow control can be exercised by a local government in the future.

A similar bill has been reported by the House Commerce Committee's Subcommittee on Commerce, Trade and Hazardous Materials. The chairman of the Commerce Committee did not approve of the subcommittee's action and has failed to bring the bill before the full committee for the last four months.

In response, NACo and NLC have acceded to his wishes by agreeing to a bill that is far more limited than the Senate bill. We have agreed to not oppose a narrower bill in the Commerce Committee because without congressional action very soon, there are billions of dollars in debt-financed facilities that are in jeopardy of being downgraded by the bond rating firms.

Urgency of Congressional Action

Those local governments that are most directly affected by Congress' failure to pass flow control legislation are those that have issued debt relying on flow control authority for the construction of waste management facilities, including recycling facilities, waste-to-energy facilities, and landfills,. Since 1980, over \$20 billion in state and local bonds have been sold for these projects. Unless legislation is promptly enacted, many communities face severe financial consequences because of their inability to service bonds already issued. Other communities have spent many millions of dollars planning and developing new facilities which will be deferred or canceled because of the threat of lawsuits resulting from the *Carbone* decision.

Downgradings of bond issues, affecting \$1.1 billion, were reported by Moody's Investors Service in their Municipal Credit Report in May of this year. Connecticut, Florida, Maryland, Michigan, New Jersey, New York and Virginia are the first such victims of Congress' reluctance to act. Facilities in six other states - California, Massachusetts, Oregon, Pennsylvania, Utah, and Washington - are the next group most at risk for downgrades. Some communities are getting closer to outright default with each passing week. In good conscience, we cannot wait for more communities to be placed in a situation where they must balance their state-mandated responsibilities against their bond ratings.

Conclusion

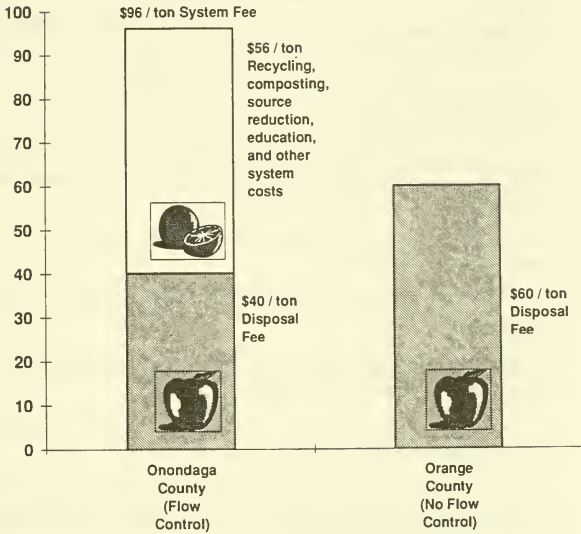
The current rhetoric aside, counties did not act to manage solid waste in an effort to replace the free market with exclusive government control. We have acted in good faith; we have represented the public's interest; and the systems we have built and operated in public-private partnerships are an accomplishment that has been done well.

This committee is rightly concerned about impact of waste flow control laws on small businesses. As we have said, in many communities if flow control disappears, small businesses will be adversely affected. Local taxes will have to increase and the higher costs of state-mandated environmental programs will be passed back to small companies that operate in our communities.

The committee ought to be more concerned, in our opinion, about the real threat to the small haulers and other small businesses by the giant national waste companies. As fewer and fewer national companies control the landfills in this country, and as the market gradually constricts for waste collection and disposal, small companies' control over managing their disposal costs is becoming imperiled. We urge this committee to focus its review on that danger and to recognize that flow control helps, rather than hinders, the competitive environment.

Thank you for this opportunity to express our views.

Apples to Apples Comparison of Orange and Onondaga County Solid Waste Disposal Fees



- The Onondaga County Disposal Fee is 1/3 lower than the Orange County Disposal Fee because of a long-term contract with a private landfill owner made possible by County-wide flow control ordinances.
- Orange County Disposal Fee of \$60/ton is a "spot market" price for trash only at a nearly full private landfill with no long-term capacity or price guarantees.
- The Onondaga County Disposal Fee of \$40/ton is at a private landfill under contract to the County with capacity and price guarantees.
- All other costs for recycling, administration, development and reserves provide comprehensive services and assurances of long-term capacity at stable prices to the taxpayers of Onondaga County.
- In Orange County, the cost of these additional services is covered by the general tax base, and there is no assurance of long-term capacity and price stability because there are no long-term disposal contracts with private parties.
- The Orange County Disposal Fee does not financially support recycling programs. The Onondaga County System Fee does.
- The Orange County Disposal Fee does not underwrite the cost of collecting household hazardous wastes at a cost of a quarter of a million dollars per year. The Onondaga County System Fee does.
- The Orange County Disposal Fee does not support the cost to remove household batteries from the waste stream. The Onondaga County System Fee does.
- The Orange County Disposal Fee does not support the cost to operate yard waste compost sites. The Onondaga County System Fee does.
- The Orange County Disposal Fee does not cover the cost to operate two interim Transfer Stations which annually process upwards of 300,000 tons of municipal solid waste produced by the 33 participating communities. The Onondaga County System Fee does.
- The Orange County Disposal Fee does not cover the cost to purchase Recycling Blue Bins or their replacements. The Onondaga County System Fee covers this cost.
- Managing solid waste cannot be simply measured in monetary terms. It must also incorporate various environmental concerns, long-term reliability and satisfaction of the federal and state policies calling for a hierarchical solid waste system.

Testimony of

Melvin Kelly, President

K&K Trash Removal

before the

House Committee on Small Business

Hearing on Waste Control Regulations and Small Business

September 13, 1995, 10:00 a.m.

K & K TRASH REMOVAL

P.O. Box 237

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Good morning and thank you for the opportunity to testify on flow control.

I am Mel Kelly. I own and operate K&K Trash Removal, which is located in Severn, Maryland. My company collects solid waste and recyclables from businesses and residences in three Maryland counties and in Baltimore City. K&K also collects recyclables from residences in Montgomery County. I have 34 full time employees. I own 14 trucks.

I started K&K in 1973. At that time I was an electrical engineer, I had one truck and a dream of creating a business that would provide for my family and my employees. I have worked hard to realize this dream. Garbage hauling and recycling are hard work. Maryland can have cold, snowy winters and hot humid summers, and my crews have to collect trash and recyclables throughout the year. We have to collect the materials on time, quickly and efficiently. We have to keep our customers happy.

It hasn't been easy. Competition for business and residential accounts is intense. I have to be able to offer better service at better prices than my competition, which includes other small local businesses and large national hauling companies. I can compete successfully because I have built an efficient cost-conscious company that is always looking for ways to offer the lowest prices and best service.

As a small businessman I must be flexible and on the lookout for ways to save money. I must be open to innovation and ready to take advantage of opportunities quickly. This actually gives me a small advantage over larger, national companies with their corporate bureaucracies. However, I have to be able to move quickly or I will lose my advantages over these large companies.

Why don't I like flow control? Because it takes away my ability to react quickly and find ways to cut costs and save money. Before the recent court decision ending flow control, several counties and cities I collect garbage in required me to dispose of the trash at a "designated" (or "flow controlled") facility. I had to pay the price charged by the facility. I could not use a less expensive facility. As a result, flow control forced me to pass on to my customers

inflated disposal prices. Flow control forced me to charge higher prices than necessary.

Let me give an example of what I mean. In Prince Georges County, the flow controlled tipping fee was \$72.00 per ton. Now that those facilities have to compete for waste, the fee is \$49.00 per ton. Clearly, competition for disposal services has forced prices down.

Small businesses can take advantage of these savings. A business that generates, say, 50 tons of trash a year, will be paying \$1000 less in tipping fees in a year. These may seem like small savings. But, to a small business, they are large!

Please remember, most of my commercial accounts are small businesses, in many cases mom and pop operations. They need to keep their expenses down. They are not as able to absorb the extra costs of flow control as are larger businesses. And what upsets me even more about flow control is that they blamed me when I had to raise prices because of these flow controlled tipping fees. They

thought I was responsible for the higher prices when all I was doing was passing on costs imposed on me by county bureaucrats.

Madame Chair, a flow controlled facility can be more expensive for small businesses in other ways. After all, it is insulated from competition. It can charge any price it wants. It can operate however it wants. It doesn't matter if the people at the facility are slow to unload trucks, if the facility offers unfair credit terms, or if it has limited or inconvenient operating hours.

You might remember I said I had 14 trucks. I can't afford to have one of my crews and their trucks idling away their time, waiting to unload at a facility. I have to pass that expense on to my customers. It's particularly hard for me because I don't have many trucks. I can't afford to have productive crews and their trucks wasting time, idling away at a disposal facility.

I'd like to look now at some of the arguments made in favor of flow control.

Some people say that flow control is okay because it puts everybody on an equal footing. I don't want to be on an equal footing with my competition. I want

to be better. My employees and I can prosper the most when we are better than our competition. Our ability to compete without the bureaucratically imposed rules and prices of flow control puts me above my competition.

Some people also say flow control is necessary to guarantee that disposal facilities get enough garbage to pay for their bonds. I disagree. I'm a garbage man. I see trash day in and day out. I know that flow control does not guarantee garbage.

Why? You have to understand that garbage has changed since I got into this business. People are using different products made of different materials. Recycling is more important and more widespread. Twenty years ago my commercial accounts threw away their corrugated, cardboard boxes. Today they recycle them. What's in the waste stream has changed and will continue to change. There's simply less of the stuff defined as garbage.

And I've seen changes in the size of the waste stream. Let's face it, when the economy is strong, I have more trash and more recyclables to collect than when the economy is weak. A good garbage man can tell you more about where

the economy is going than most economists. And I know that when the economy is weak or when recycling is strong, the flow controlled facility won't get enough garbage.

I believe in competition. I believe that competitive disposal facilities are better able to react to changes in the size and the composition of the waste stream.

Finally, some people say that flow control protects the environment. I think that enforcing EPA regulations is better for the environment than flow control. And all facilities have to comply with EPA regulations, whether they are designated or not. In fact, if the flow controlled facility was poorly operated, my customers had no protection from Superfund liability. Think about that for a minute. If the facility is poorly managed, in spite of EPA and state regulations and becomes a Superfund site, my customers are trapped with Superfund liability. I have no chance to find a better facility and avoid this liability. Without flow control, I can find a disposal facility that is operated at or above EPA requirements.

In conclusion, Madame Chair, I am a businessman. I know that city or county boundaries are meaningless when it comes to markets and disposal facilities. Even under flow control, I have willingly used some flow controlled facilities because they were the closest to my routes and other facilities were simply too far away to overcome their cost advantages. However, I could not have used those facilities even if they were less expensive or offered better credit terms. Now that flow control is gone, everyone competes for my trash, including those facilities that are closest to my routes. They all have to operate more efficiently. Competitive facilities know that if they don't operate efficiently, they will lose business. My customers are the winners.

Madame Chair, it's an honor for me to testify before this Congressional Committee. Thank you for this opportunity. I ask that you help ensure that competition remains alive and that small businesses can continue to prosper without the extra costs of flow control.

Good morning, my name is John McKeon. I am Vice President of GZK, Incorporated. GZK is the franchise operator of fifty-one restaurants in five counties in southwest Ohio. We are better known to our customers as Arby's, Lee's Famous Recipe and Chuck's Burgers and Stuff. We employ approximately 1300 people.

I am speaking on behalf of my own company and the National Restaurant Association.

I want to thank the committee for the opportunity to speak on this issue. It is important that those who pay the bill are heard from and we appreciate the interest of the Small Business Committee on the issue of flow control.

For the uninitiated, flow control allows a political jurisdiction to determine which waste disposal method we will use and at which facility. It does not matter that there may be a number of options open to us. We lose the ability to choose.

Last year, the Supreme Court struck down the practice of flow control. We are concerned that during this session of congress, an attempt will be made to limit the options that GZK and other small businesses will have for refuse disposal.

The Commerce Committee will soon consider a bill that would re-establish government sanctioned monopolies in the area of waste collection services. These monopolies operate without any specific benefit to us, the customers, and at a cost much greater than we could negotiate on the free market.

Business owners are concerned with a number of aspects of flow control. I think I can best illustrate this by describing the trash removal scenarios in two of the counties our company does business in.

In Miami County, our trash is picked up by our contracted hauler and taken to the county-owned and operated transfer station. The trash is dumped at the station at a cost of \$50/ton which is passed on to us, the customers. This trash is then reloaded onto other trucks and hauled to a privately owned landfill in another county. The irony of this situation is that the landfill is owned by our contracted hauler.

My company gets to pay for all this hauling and handling and for what purpose? Of course, we know the purpose. It's so that a fee or tax can be placed on our trash. Call it whatever you want, it is still unnecessary.

My company also gets to pay for the inefficiencies associated with having to take the trash to the county's designated location. Movement of trucks cannot be based on the most efficient routing. Achieving full loads becomes a problem when county lines have to be crossed.

Most of our stores are located in Montgomery County. Haulers are required to take trash to a designated location, in this case, one of two county owned and operated incinerators.

Tipping fees are charged at the current rate of \$41.06/ton. The costs do not stop there however. A Montgomery County disposal fee is also assessed. Last year this fee cost our company \$19,861. This year the amount will be \$34,667, an increase of 75%!

The reason for this outrageous hike is that the incinerators are not in compliance with EPA directives and a rehab is necessary at an estimated cost of \$113 million.

But now the county is facing another dilemma. It seems the contractors bidding the retrofits are unable to guarantee the county that when all of the work is done and millions of dollars spent the incinerators will be in compliance with the law.

A plan to mothball the incinerators, convert to transfer stations and haul the trash to a landfill in another county is seriously being considered. This will cost more money according to the county and we all know who is going to have to pay it. Maybe they just need to take themselves out of the loop.

We are all concerned with the environment. It is not good business to be otherwise. In Montgomery County, we are mandated to dispose of our trash in a manner that is in violation of the very laws that were passed to protect the environment.

There are those who will tell you that facilities will fail if flow control goes away, and some might, and maybe they should. We understand that there may be an attempt to protect publicly financed facilities. Perhaps a way can be worked out to privatize these facilities without flow control and then be operated in such a manner so as to retire the debt.

There are other facilities that have little or no debt, are privately owned and operated who will also be protected by the Commerce Committee bill. As consumers, we wonder why the Federal Government would want to ensure the profit of one business at the expense of another. Following that line of reasoning, we should be able to get a federal mandate requiring everyone living in the counties GZK operates in to eat at our restaurants. Sound stupid? That is the way we see flow control.

GZK pays a wide range of prices for the very same service. Prices for disposal range from \$25/ton to \$61/ton, not counting Montgomery County's additional disposal charge. This year, GZK's cost for disposal of trash was \$135,000, an increase of 14% over the previous year, and that is with a recycle program in place.

We should have the option to pick the most competitive alternative available to us. We understand that our costs would be cut 10% to 40% without flow control. These are numbers we cannot ignore.

If a political jurisdiction wants to tax our company to pay for some necessary function, let them. But do not force us to use services we don't need at facilities that never should have been built in order to generate money for some government program.

Thank you for your consideration of the problems facing small business with this issue.

TESTIMONY OF DAVID M. MUCHNICK BEFORE THE HOUSE COMMITTEE ON
SMALL BUSINESS, WASHINGTON, D.C., SEPTEMBER 13, 1995

Thank you, Mr. Chairman and members of the committee, for the invitation to appear here today and comment on the effects of flow control on small business.

My name is David M. Muchnick. I am the president and chief executive officer of the South Bronx 2000 Local Development Corporation, the CEO of its R2B2[™] plastics recycling subsidiary and its Big City Forest[™] reclaimed wood products manufacturing company, and the executive director of its Empire State Center for Recycling Enterprise Development.

Bronx 2000[™] is a not-for-profit development organization that has been successful in creating, incubating, and operating community-based recycling businesses that reduce the waste disposal costs to businesses and local governments, create jobs, and foster sustainable use of natural resources, forests, and energy.

In 15 years, Bronx 2000 has accumulated considerable experience in environmental enterprise development. Two of our subsidiaries have become national businesses. We supply investment-grade national manufacturers; we conduct R&D projects with national industry trade associations; we pioneer new recycling technologies; and, we integrate local recyclers in the northeast into national markets.

Together, our enterprises have sold more than 200,000 tons of secondary materials, grossed almost \$15 million in secondary material sales, paid out \$4 million to local employees and community recyclers, saved local companies \$3.5 million in operating costs, and conserved more than 2.6 trillion Btus of energy, 500,000 barrels of oil, one billion cubic feet of natural gas, 55,000 tons of ores and minerals, 500 acres of forests and timberlands, and two million trees.

Our Empire State Center for Recycling Enterprise Development, which we established in partnership with the New York State Office of Recycling Market Development, is focused on the development of enterprises for remanufacturing products with reclaimed wood and engineering-grade, durable plastics (e.g., the casings of end-of-life computer monitor and televisions as well as carpets and rugs).

In sum, I look unfavorably on flow control for two basic reasons.

First, flow control places control of the wastestream in the hands of operating systems and facilities that burn or bury valuable recyclable materials or that fail to optimize the quality and market value of such recyclable materials. Thereby, flow control undermines the opportunity to use these secondary materials to create or expand value-adding, manufacturing businesses that can create blue-collar jobs and conserve natural resources.

Second, flow control burdens small businesses with higher waste disposal costs. It denies them the opportunity to reduce these costs by source-separating and recycling their secondary materials on their own. It chills their willingness to source-separate and recycle their own materials with the prospects of costly enforcement actions or legal proceedings. And, by limiting the availability of source-separated recyclable materials from local businesses, it

makes it more difficult for new and existing manufacturers to use secondary materials in their manufacturing processes.

Instead, I would ask this committee to direct its attention and support to public and private investment policies and waste management practices (1) that assist small businesses to reduce their waste and waste disposal costs by source-separating and optimizing the market value of their recyclables and (2) that assist new and existing manufacturing firms to create reliable domestic markets for these secondary materials by using them in their manufacturing operations.

With respect to my first objection to flow control -- its support for waste management systems that burn or landfill valuable recyclables or fail to optimize the quality and marketability of recyclable materials -- I'd like to illustrate the scale of the potential loss on a national scale.

According to our estimates, at market prices prevailing this summer, the recyclable materials in the wastestreams of the country's 49 largest metropolitan areas could potentially have been worth about \$2.4 billion dollars a year to the generators of these materials. If these materials were processed to the specifications of end-product manufacturers, their potential market value would have reached about \$6 billion dollars a year.

Assuming that the processing companies allocated 25 percent of their annual revenues (or \$1.5 billion) to labor costs, then this potential \$6 billion in market value could generate about 60,000 jobs with an average of \$25,000 per annum in wages and benefits.

What's at stake for small business on an operating scale in the choice between policies that favor waste management systems that burn, bury, or otherwise devalue recyclable materials on the one hand and practices that add value to such materials on the other can be illustrated by a comparison of conventional woodwaste disposal with our own Big City Forest subsidiary.

In a nutshell, operators of conventional woodwaste disposal facilities simply grind discarded wood -- including, the oak, cherry, mahogany, and other hardwood and softwood species found in discarded shipping pallets -- into fiber or chips worth about a penny to a penny-and-a-half a pound in various markets. According to *Resource Recycling Magazine*, more than half of this ground wood is burned for fuel, not recycled.

The tendency toward low-value applications is quickly becoming entrenched in the wood recycling industry and in government programs. The US Department of Agriculture's research and development on wood reclaiming focuses almost exclusively on ground wood applications. The waste hauling industry favors grinding discarded wood to lower its own transportation costs. Although it serves the narrow interests of the private- and public-sector waste management industries, grinding wood does little in terms of job creation and resource conservation.

By contrast, Big City Forest takes in discarded wood shipping containers and pallets, sorts them by species, reclaims and remills the lumber from the discards, and makes new pallets, furniture, flooring and other value-added, solid wood products. As a result, the same oak pallet that conventional woodwaste disposal facilities devalue into 52 cents worth of woodchips or fiber becomes, in Big City Forest's hands, oak strip flooring with a sales price of about \$25.

Bronx 2000's subsidiary, Big City Forest,[™] represents the state-of-the-art in value-added, reclaimed wood products manufacturing. Its reclaiming and remanufacturing system has revolutionized the conventional paradigm for woodwaste recycling in several ways. It is labor intensive. It preserves and adds to the value of the oak, maple, cherry, mahogany, and other hardwoods and softwoods in the discards. It makes it possible to produce high quality furniture, flooring and other wood products without cutting down as much virgin timber and forestland.

It also saves the businesses which supply it with discarded wood millions of dollars annually in waste disposal costs -- savings which can help keep these businesses and the jobs they create in their communities. Companies achieve these savings by source-separating their discarded pallets and crates and shipping them to us in 45-foot trailers that can carry 3 times as much material as the rolloffs used by most carting companies at one-fifth the cost.

These cost-savings bring me to my second objection to flow control -- or any analogous system that makes small business captive, de jure or de facto, to a single public- or private-sector waste hauler or waste disposal facility.

No doubt this committee has received or will receive testimony documenting the fact that flow control increases waste disposal costs for small business, so I won't belabor that point.

I would simply stress two related matters. First, flow control can also deny small business the opportunity to reduce their waste disposal costs significantly by source-separating and marketing, donating or otherwise distributing their recyclable materials on their own.

For, unless flow control or any analogous exclusive solid waste collection-and-disposal system excludes from its coverage, by definition, the recyclable commodity materials that are source-separated by a generator and intended for sale or reuse, small businesses will generally not perceive source-separating their recyclable materials to be an available or legal option. And, the prospects of having to challenge flow control regulations in their own legal proceedings or in defense of an enforcement action against them can chill their willingness to try source-separation.

Second, since businesses are the most reliable suppliers of the recyclable materials needed to launch the types of value-adding reprocessing and remanufacturing enterprises I mentioned above, by discouraging businesses from source-separating their recyclables flow control undermines the availability and reliability of these supplies and makes it difficult, if not impossible, to launch such ventures in the jurisdiction encumbered by flow control.

Thank you very much.

ESTIMATED MARKET VALUE OF SELECTED RECYCLABLES IN THE MUNICIPAL WASTESTREAMS
OF THE 49 LARGEST INNER METROPOLITAN AREAS IN THE U.S.
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AREA	GENERATOR MARKET PRICE PER TON	INTRMD PROC MARKET PRICE PER TON	TOTAL 49 LARGEST INNER METRO AREAS		
			ESTIM ANNUAL TONS MUNICIPAL WASTE(per capita estimate)	ESTIM WASTE TONNAGE AVAILABLE	ESTIM INTRMD PROC MARKETVALUE
ESTIM INNER METRO POPULATION (1990 CENSUS)			70,690,138.0		
ESTIM ANNUAL TONS MUNICIPAL WASTE(per capita estimate)			60,353,477.4		
PERCENTAGE OF US 1990 POPULATION			28.42%		
PRODUCTS	GENERATOR MARKET PRICE PER TON	INTRMD PROC MARKET PRICE PER TON	ESTIM WASTE TONNAGE AVAILABLE	ESTIM GENERATOR MARKETVALUE	ESTIM INTRMD PROC MARKETVALUE
DURABLE GOODS					
Major Appliances	\$20	\$20	1,026,009	\$20,520,182	\$20,520,182
Rubber Tires	\$0	\$0	724,242	\$0	\$0
Other Durables	\$0	\$0	6,638,883	\$0	\$0
TOTAL DURABLES			8,389,133	\$20,520,182	\$20,520,182
NONDURABLE GOODS					
Newspapers	\$70	\$130	4,466,157	\$312,631,013	\$580,600,453
Books and Magazines	\$20	\$100	1,810,604	\$36,212,086	\$181,060,432
Office Papers	\$150	\$350	2,474,493	\$371,173,886	\$866,072,401
Commercial Printing	\$50	\$200	1,388,130	\$69,406,499	\$277,625,996
Other Nonpackaging Pap	\$15	\$90	3,138,381	\$47,075,712	\$282,454,274
Other Misc. Nondurables	\$15	\$90	3,681,562	\$55,223,432	\$331,340,591
TOTAL NONDURABLE GOODS			16,969,327	\$891,722,629	\$2,519,154,147
CONTAINERS AND PACKAGING					
Glass Containers					
Beer and Soft Drink	\$20	\$40	1,810,604	\$36,212,086	\$72,424,173
Other Glass Containers	\$20	\$40	1,991,665	\$39,833,295	\$79,666,590
SUBTOTAL - Glass			3,802,269	\$76,045,382	\$152,090,763
Steel Containers					
Beer & Soft Drink Cans	\$20	\$50	60,353	\$1,207,070	\$3,017,674
Food and Other Cans	\$20	\$50	844,949	\$16,898,974	\$42,247,434
Other Steel Packaging	\$20	\$50	60,353	\$1,207,070	\$3,017,674
SUBTOTAL - Steel			965,656	\$19,313,113	\$48,282,782
Aluminum					
Beer & Soft Drink Cans	\$900	\$1,300	482,828	\$434,545,037	\$627,676,165
Other Aluminum Packag	\$200	\$1,200	120,707	\$24,141,391	\$144,848,346
SUBTOTAL - Aluminum			603,535	\$458,686,428	\$772,524,511
Paper and Paperboard					
Corrugated Containers	\$75	\$130	7,785,599	\$583,919,894	\$1,012,127,816
Other Paperboard	\$50	\$200	1,750,251	\$87,512,542	\$350,050,169
Paper Packaging	\$15	\$200	1,569,190	\$23,537,856	\$313,838,082
SUBTOTAL - Paper			11,105,040	\$694,970,292	\$1,676,016,067
Plastic Packaging					
LDPE	\$60	\$60	724,242	\$43,454,504	\$43,454,504
HDPE	\$200	\$400	663,888	\$132,777,650	\$265,555,301
PET	\$500	\$500	181,060	\$36,212,086	\$90,530,216
PVC	\$160	\$300	120,707	\$19,313,113	\$36,212,086
Other Plastic Packaging	\$100	\$200	482,828	\$48,282,782	\$96,565,564
SUBTOTAL - Plastic			2,172,725	\$260,040,135	\$532,317,671
Wooden Pallets & Crates	\$0	\$30	1,540,315	\$0	\$46,209,451
Other Wood Packaging	\$0	\$0	994,348	\$0	\$0
SUBTOTAL - Wood Pkg			2,534,663	\$0	\$46,209,451
Other Misc. Packaging			60,353	\$0	\$0
TOTAL CONTAINERS AND PACKAGING			21,244,241	\$1,529,055,350	\$3,227,441,244
TOTAL NONFOOD PRODUCT WASTE			46,592,701	\$2,441,298,161	\$5,767,115,573
OTHER WASTES					
Food Wastes	\$0	\$10	4,466,157	\$0	\$44,661,573
Yard Wastes	\$0	\$10	10,622,212	\$0	\$106,222,120
Misc. Inorganic Wastes			905,302	\$0	\$0
GRAND TOTAL			62,586,373	\$2,441,298,161	\$5,917,999,267

STATEMENT OF
MICHAEL SHAPIRO
DIRECTOR, OFFICE OF SOLID WASTE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

September 13, 1995

Good morning Madam Chairwoman and Members of the Committee. I am Michael Shapiro, Director of the Office of Solid Waste at the Environmental Protection Agency (EPA). I am pleased to have the opportunity to appear before you this morning to discuss municipal solid waste flow control and to provide an overview of the Agency's Report to Congress on this issue. I will begin my testimony this morning by providing the Committee with some background information on flow control and our report.

BACKGROUND

Flow controls are legal authorities used by state and local governments to designate where municipal solid waste (MSW) must be taken for processing, treatment or disposal. This waste management approach requires waste to be delivered to specific facilities such as waste-to-energy (WTE) facilities, materials recovery facilities (MRFs), composting facilities, transfer stations and/or landfills. The facilities can be either publicly or privately owned. One of the direct effects

of flow control is that designated facilities are assured of receiving a guaranteed amount of MSW and/or recyclable materials. If the designated facilities charge a "tipping fee" for receipt of the MSW, flow control assures a source of revenue to meet their capital and operating costs.

Flow controls have become a heavily debated issue among state and local government, private service providers, recyclers and environmental groups. Financial institutions have been a part of the discussion because of the relationship between flow controls and financing of waste management facilities. These interested parties hold differing views on the environmental, planning, and economic benefits of flow controls.

In September 1992, the Congress asked EPA to develop and submit a report on flow controls as a means of MSW management. The report, which was issued in March 1995, presents the Agency's answers to the questions raised by the Congress. Specifically, it reviews states with and without flow control authority and describes the impact of flow control on 1) protection of human health and the environment; and on 2) development of state and local waste management capacity and on the achievement of state and local goals for source reduction, reuse and recycling.

In an effort to analyze the issues raised by Congress, we held three public meetings to obtain information from interested stakeholders. Also, we examined states' solid waste management laws to compare flow control authorities across states. Finally, we performed a market analysis of the four primary MSW management segments (i.e., composting, recycling, combustion and landfills) to assess the role of flow control in ensuring capacity and in attaining recycling goals.

I will now explain our findings.

FINDINGS

The first question given to us by the Congress asked EPA to present a comparative review of States with and without flow control authority. We found that thirty-five states, the District of Columbia and the Virgin Islands authorize flow control directly; four additional states authorize flow control indirectly through mechanisms such as local solid waste management plans and home rule authority; and eleven states have no flow control authority.

Congress's second question asked EPA to identify the impacts of flow control ordinances on the protection of human health and the environment. Our

study found that protection of human health and the environment is directly related to the implementation and enforcement of federal, state and local environmental regulations, Irrespective of whether individual states and local governments administer flow control programs.

Lastly, Congress asked us to Identify the impact of flow control on the development of state and local waste management capacity and on the achievement of state and local goals for source reduction, reuse and recycling. We found that flow control is not essential for the development of new solid waste management capacity, nor is it essential for achieving state and local goals for source reduction, reuse and recycling. Flow controls have provided an administratively effective mechanism for local government to plan for and fund their solid waste management systems. However, other options could also be used.

Evaluation of the composting, recycling, combustion and landfill market segments indicates that sufficient capacity exists on a national basis to manage the relevant waste stream. Recycling and composting rates have increased substantially in recent years; waste-to-energy (WTE) has grown, then leveled off; and landfill capacity has been extended due to increased composting/recycling efforts and landfill bans.

The analysis also showed that flow controls play a limited role in the solid waste management market as a whole. Only a small percentage of the waste managed by the composting, recycling and landfill market segments is affected by flow controls. WTE facilities, accounting for 31 million tons of MSW, are the segment where flow controls play the largest role; a minimum of 58 percent of WTE throughput is supported by flow controls. An additional 31 percent of throughput is guaranteed through contractual arrangements, some of which may be supported by a flow control ordinance to ensure that enough waste is delivered to meet the terms of the contract.

Flow controls affect approximately three percent of the 40 million tons of recyclable materials. Materials recovery facilities (MRFs) are the recycling market subsegment making use of flow controls. Flow controls support about 13 percent of MRFs with 19 percent of total MRF throughput (over 1 million tons). It is important to note that 32 percent of waste handled by "high technology" MRFs, which require substantial capital investment, are supported by flow controls. Also, an additional 44 percent of total MRF throughput is guaranteed under contractual agreements, some of which may be supported by flow control.

EPA also found that some jurisdictions use flow controls to support various elements of integrated solid waste management systems (ISWM). Flow

controls are used to support services such as curbside collection for recycling. They are also used to support services and practices that generally do not lend themselves to generation of their own revenues (e.g., household hazardous waste collection, source reduction programs, public awareness). For such cases, the report suggests several alternatives that state and local governments could, and in some cases already do, use to support their solid waste management system. These include taxes, uniform user fees, unit-based (i.e., variable) fees and market-based tip fees. However, implementation of these alternatives by communities currently relying on flow controls could be politically difficult, potentially disruptive, and take time.

In summary, EPA's report shows that flow controls provide an administratively effective tool for local governments to plan and fund solid waste management systems. However, the Agency found no data showing that jurisdictions having flow control authority provide more protection in terms of human health and the environment than jurisdictions without such authority.

Madam Chairwoman, this concludes my prepared remarks. I will be happy to respond to any questions you or other members of the Committee may have at this time.

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Congress of the United States
House of Representatives
Washington, DC 20515-3004

September 13, 1995

CHRISTOPHER H. SMITH

6TH DISTRICT, NEW JERSEY

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COOPERATION IN EUROPE
CHAIRMAN

The Honorable Jan Meyers
Chairwoman
Committee on Small Business
Washington, D.C. 20515

Dear Madam Chairman:

I am writing in reference to today's hearing on flow control legislation. As the author of legislation to provide a narrow grandfather for communities which have invested resources based on flow control authority, I respectfully request that you insert this letter into the official hearing record.

The Supreme Court's May 1994 *Carbone* decision changed -- in midstream -- the rules of the game for the disposal of waste. Communities have been using flow control since the mid-1970s, when Congress passed the Resource Conservation and Recovery Act (RCRA). It was an effective tool for meeting their traditional solid waste management needs with flexibility. By basing solid waste management plans on flow control, communities have been able to use the most-advanced technology available, as well as to finance recycling and consumer reuse and reduction education programs without raising taxes or cutting other essential services.

In the post-*Carbone* world, however, communities still have the responsibilities that came with RCRA; but they no longer have the use one of the best tools to carry them out efficiently.

My bill, HR 1085, as well as Chairman Mike Oxley's committee print reported out of the Subcommittee on Commerce, Trade and Hazardous Materials this past spring, acknowledges the new rules and seeks to help local governments make a transition to the post-*Carbone* era. The legislation offers a narrow grandfather that prohibits prospective flow control yet at the same time helps communities that have made substantial investments predicated on flow control.

I think it is important to note how far flow control proponents have come since the *Carbone* decision. The lead bills now pending before the House have been modified significantly from that which the House approved by unanimous consent just last October. After intense negotiations between local government groups, Wall Street representatives, and private sector companies we have drafted policy changes agreed to by almost all of the affected parties.

The key to the compromise is a narrow grandfather for those communities who were flow controlling or had made significant steps towards utilizing flow control -- as specifically defined in the legislation -- prior to May 15, 1994.

Equally important is ensuring maximum free market competition and not allowing flow control to continue in perpetuity. In fact, those communities which fall within the parameters of the grandfather, may only flow control to that particular facility until its useful life is reached, its debt is retired, or its contracts have expired. At that point, if a grandfathered community wants to use flow control for another facility, it must prove that flow control is necessary to meet the short-term and long-term, anticipated or current waste management needs of the community in both a cost-effective and environmentally sound manner.

This is indeed a reasoned approach and one that represents great compromise on the part of the local governments representatives. Groups like the National Association of Counties, the Conference of Mayors, the Solid Waste Management Association of North America believe that flow control is an appropriate tool for local governments to use in meeting their traditional waste management responsibilities and that it should simply be restored to the pre-*Carbone* status quo. Still, they have moved from this position in the hopes of providing some relief to communities in dire situations.

The fact of the matter is that local governments, as well as the Public Securities Association on behalf of Wall Street interests, have recognized the absolute urgency of passing some sort of grandfather -- however narrow -- quickly. The hard, cold financial consequences of the Supreme Court's *Carbone* decision are now beginning to surface. And the taxpayers will ultimately pay the price, unless Congress takes decisive and prompt action.

Several communities in my home State of New Jersey, Pennsylvania, Florida, California, New York, New Hampshire, and Illinois have had their credit ratings downgraded or have been put on 'credit watch' because they have lost the ability to flow control. There is an outstanding debt of more than \$10 billion and countless volumes of other municipal resources -- including funds, time, manpower, and effort -- are at stake if Congress fails to act soon.

Despite the urgency and the balance struck in the legislation, there are those who charge that flow control is anti-competitive and will increase costs. In a letter to you dated May 26, 1995, Jere W. Glover, Chief Counsel for Advocacy of the Small Business Administration made such assertions and I would like to take a moment to address these thoughts.

For instance, Mr. Glover is incorrect when he states that flow control is responsible for adding to the "cost of disposal and treatment of waste." In flow control systems, the cost of disposal and treatment are generally no different than in non-flow control systems, and in some instances, are less. Instead, the differences in tipping fees to which he refers are more often than not the result of costs of other parts of the integrated disposal systems, such as recycling and composting programs adopted by the communities. In fact later in the same letter Mr. Glover himself concedes that: "all the costs are combined in one fee that may cover more than the disposal fees, such as for a recycling or composting program."

Sadly, the record has shown that recycling and other activities, while popular and effective, have difficulty in generating revenues. In their recent study on flow control, the Environmental Protection Agency's (EPA) -- which takes no definitive stand on the question of whether flow control is good environmental policy -- unequivocally states that: "Influencing the use of flow control were State goals and mandates for increased recycling...Flow control was one mechanism used by local governments to generate needed revenues to pay for programs and to direct waste to recycling/composting facilities" (EPA "Report to Congress" 3/95).

Small businesses, haulers, as well as local taxpayers would be paying for the costs of these recycling and composting programs -- through property and other taxes and levies -- if there were no flow control. Mr. Glover's conclusion that prohibiting flow control would lower costs for haulers and consumers is predicated on an incomplete view of solid waste systems and regrettably is misleading.

Another point missed by Mr. Glover is that flow control systems have provided level, competitive open bidding processes in which small haulers may compete for business. Conversely, when there is no flow control, it is not uncommon for giant, vertically integrated firms which own landfills as well as trucks and collection facilities, to monopolize local hauling contracts by using their own landfills. Flow control has enabled all haulers--whether giant companies or local mom-and-pop hauling firms -- to compete on a level playing field. Furthermore, the legislation pending before the House mandates a competitive designation process so that no one public or private entity is given an advantage over another.

The suggestion that flow control increases the risk of Superfund liability for the transporter is erroneous. Under the proposed legislation no hauler will be required to ship its waste to a Superfund site. There is absolutely no basis for saying that flow-controlled facilities are more likely to be Superfund sites than non-flow controlled ones. Indeed, the statistics are exactly the opposite: There are far more Superfund sites in non-flow-controlled jurisdictions than flow-controlled ones.

Finally, I would like to emphasize that Mr. Glover advises that flow control legislation makes the "most sense" when revenue bonds have already been issued in reliance on flow control. I am pleased to point out that this is, in practical terms, where the legislation is today. It is my sincere hope that your hearing will help both sides of this issue recognize that they are significantly closer in their analysis of what needs to be and what can be done to help local governments meet their waste disposal obligations and avoid financial fiasco.

Sincerely,



CHRISTOPHER H. SMITH
Member of Congress

Testimony of Linda Bacin, Chairman and President of the Illinois Restaurant Association, 350 West Ontario Street, Chicago, Illinois 60610 before the United States House of Representatives Committee on Small Business

I am the Chairman and President of the Illinois Restaurant Association (IRA) a statewide organization of over 3500 food service businesses. I am an active restaurant owner with multiple locations with the Bacin Group. I am in Washington D. C. to attend the National Restaurant Association's Public Affairs Conference. The IRA is a pro-environment organization whose Environment Committee has worked with all levels of government and the private sector to improve the efficiency of re-cycling programs, packaging programs and encourage the use of re-useable products in the restaurant industry. We have been cited for our outstanding environmental record by many groups.

Today I am here to discuss with you the proposed bill to grandfather flow control ordinances in 27 states including Illinois. I am here to oppose this action. The nature of the food business creates high levels of solid waste. The cost of waste hauling is a growing percentage of restaurant operating budgets. Currently, restaurants spend on average 1% of their revenues on

waste hauling and other environmental issues. This expenditure is significant in an industry where the average percentage of profitability is under 3%. Therefore, anything that effects the cost of waste hauling has a dramatic effect on the viability and profitability of restaurants.

Restaurant owners are not natural allies of waste haulers, as proved by the fact that on average restaurants change waste haulers three times a year because of cost considerations. Restaurant owners aggressively watch costs because there is little room for a mistake. The proposed bill has the possibility of increasing waste hauling by as much as 40%.

The IRA is opposed to any legislation that increase the cost of waste hauling, reduce private sector initiatives for more efficient and creative methods of waste hauling or leaves business with only a sole source government controlled waste hauling alternatives. This legislation does all of these things. We are aware that many major environmental groups join us in opposition because this legislation does not improve the environment.

The best that can be said of the communities in Illinois with "flow control" ordinances is that they collect the garbage. The cost for restaurants in those

communities is higher and the innovative environmental services are not as good as other communities where free market principles are in place.

The restaurant operator in America is real small business. To pass this bill would be to limit our choices in effectively negotiating the most environmental and economic beneficial waste agreement.

United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
(5305)

EPA530-S-95-008
March 1995



Report to Congress on Flow Control and Municipal Solid Waste

Executive Summary

EXECUTIVE SUMMARY

WHAT DID CONGRESS ASK EPA TO DO?

In September 1992, Congress directed the Environmental Protection Agency (EPA) to develop and submit a Report to Congress on flow controls as a means of municipal solid waste (MSW) management. Congress asked EPA to:

- ♦ present a comparative review of States with and without flow control authority;
- ♦ identify the impact of flow control ordinances on protection of human health and the environment; and
- ♦ identify the impact of flow control on the development of State and local waste management capacity and on the achievement of State and local goals for source reduction, reuse and recycling.

WHAT ARE FLOW CONTROLS?

Flow controls are legal authorities used by State and local governments to designate where MSW must be taken for processing, treatment or disposal. This waste management approach requires waste to be delivered to specific facilities such as waste-to-energy (WTE) facilities, materials recovery facilities (MRFs), composting facilities, transfer stations and/or landfills. The facilities can be either publicly or privately owned. One of the direct effects of flow control is that designated facilities are assured of receiving a guaranteed amount of MSW and/or recyclable materials. If the designated facilities charge a "tipping fee" for receipt of the MSW/recyclables, flow control assures a source of revenue to meet their capital and operating costs.

WHAT FACTORS ENCOURAGE USE OF FLOW CONTROLS?

Use of flow controls took hold in the late 1970s. State and local governments began using flow controls primarily to support the development of new MSW capacity, particularly if it required large capital investment (e.g., financing of WTE facilities). Flow controls assisted State and local governments in financing these facilities by ensuring long-term receipt of enough waste to generate sufficient revenues to pay facility debt service and other costs.

Also influencing use of flow controls were State goals and mandates for increased recycling or diversion of specific wastes (e.g., yard trimmings) from landfills. Flow control was one mechanism used by local governments to generate needed revenues to pay for programs and to direct waste to recycling/composting facilities. This enabled them to respond to State recycling goals and mandates.

As local governments expanded waste management services, flow controls were utilized as a mechanism to ensure funding for various components of their solid waste management systems such as source reduction programs, household hazardous waste collection, and public education. These services typically do not lend themselves to collection of revenues as do facility-based components (e.g., tipping fees at transfer stations, WTE facilities and landfills). The most frequent rationale for adopting flow control is to assure the financial viability of waste management facilities by providing a reliable, long-term supply of waste. This assurance can be instrumental in securing capital to finance the construction of a facility.

Flow control also may facilitate solid waste planning and management. State and local governments can plan for the appropriate type, number, and size of facilities to handle the long-term generation of waste within a specific area.

HOW DID EPA APPROACH THE CONGRESSIONAL REQUEST?

In an effort to analyze the issues posed by Congress, EPA

- ♦ held public meetings to obtain information from interested stakeholders;
- ♦ examined States' solid waste management laws to compare flow control authorities across the United States; and
- ♦ performed a market analysis of the four primary MSW management segments (i.e., composting, recycling, combustion and landfills) to assess the role of flow control in ensuring MSW management capacity and in attaining goals for source reduction, reuse and recycling.

The approach provided EPA with a *national* view of the need for flow controls. The Agency recognizes that local circumstances may differ substantially from the national perspective. Each State and local government needs to consider local conditions and alternatives when determining the need

for flow control. If a State or local government has relied on flow control to achieve certain ends, sudden elimination of flow control may disrupt ongoing solid waste practices.

WHAT ARE THE FINDINGS?

Congressional Question: *Present a comparative review of States with and without flow control authority.*

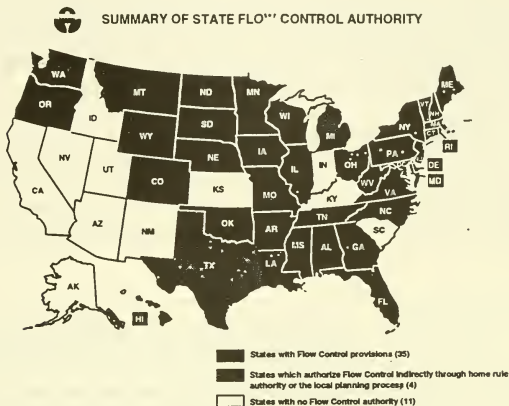
Finding: *Thirty-five States, the District of Columbia, and the Virgin Islands authorize flow control directly; four additional States authorize flow control indirectly through mechanisms such as local solid waste management plans and home rule authority; eleven States have no flow control authority.*

Discussion: No primary source of information was available which identified States with and without flow control authority or those local governments implementing flow control within the States. Developing a complete picture of the nationwide scope of flow control laws would be an extremely complex task due to the differences among State laws, the dynamics of the solid waste industry, and the variability of infrastructures among local governments across the nation. EPA determined that a comparative review of State flow control authorities could be presented by (1) reviewing State statutes and regulations, and (2) developing case studies to illustrate how local MSW programs are implemented with and without flow controls.

As shown in Exhibit ES-1, 35 States, the District of Columbia, and the Virgin Islands explicitly authorize flow control. However, not all jurisdictions exercise this authority. For example, Illinois has authority to implement flow control, but there is no evidence that local governments within the State currently use it. Also, a number of States impose administrative requirements which must be met before local governments can implement flow control, such as demonstrating a need for flow control, holding public hearings, and/or first attempting to negotiate contracts with the private sector. Of the 35 States which authorize flow control, 23 (and the District of Columbia) limit some or all recyclable materials from coverage under flow control.

Four States authorize flow control indirectly through mechanisms such as home rule (MA, MD) or the State/local solid waste management planning process (MI, TX). In a home rule State, municipalities may exercise power over local issues to the extent not prohibited or regulated by the State. Using home rule authority, municipalities may establish flow controls over their solid waste. In

EXHIBIT ES-1



Michigan and Texas, municipal solid waste planning documents determine capacity needs and can authorize flow control as part of the plans' requirements.

Eleven States (AK, AZ, CA, ID, IN, KY, KS, NV, NM, SC, UT) have no flow control authority.

Congressional Question: *Identify the impact of flow control ordinances on protection of human health and the environment.*

Finding: *Protection of human health and the environment is directly related to the implementation and enforcement of federal, State, and local environmental regulations. Regardless of whether State or local governments administer flow control programs, States are required to implement and enforce federally approved regulations that fully protect human health and the environment. Accordingly, there are no empirical data showing that flow control provides more or less protection.*

Discussion: In the United States, approximately 80 percent of MSW is managed in landfills and combustors. Landfills and municipal waste combustors are controlled by State and federal regulations which are implemented through facility permitting and compliance assurance programs. These programs are designed for the express purpose of protecting human health and the environment and require the same level of control whether or not the waste is subject to flow controls.

In recent years, States have begun regulating composting and recycling facilities to protect human health and the environment, without regard to whether the materials are subject to flow controls. Further, our market analysis shows that only a small percentage of recovered materials managed by the composting and recycling segments is affected by flow control ordinances. Also, many States that authorize flow control explicitly exclude certain recyclables from flow control restrictions.

Congressional Question: *Identify the impact of flow control on the development of State and local waste management capacity and on the achievement of State and local goals for source reduction, reuse, and recycling.*

Finding: *Flow controls play a limited role in the solid waste market as a whole. Flow controls are not typically utilized by landfills or composting facilities. Less than 3 percent of the recycling market is subject to flow controls; however, approximately 19 percent of the materials handled by existing MRF-based recycling programs are supported by flow controls. Flow controls play the largest role in the waste-to-energy market where at least 58 percent of the throughput is supported by flow controls.*

Although flow controls have provided an administratively efficient mechanism for local governments to plan for and fund their solid waste management systems, there are alternatives. Implementation of these alternatives by communities currently relying on flow controls could be disruptive and take time.

Accordingly, there are no data showing that flow controls are essential either for the development of new solid waste capacity or for the long term achievement of State and local goals for source reduction, reuse and recycling.

Discussion: EPA conducted a market analysis to determine whether market intervention in the form of flow controls is needed to ensure adequate capacity or to achieve State and local recycling goals. Our analysis addressed discrete market segments (i.e., composting, recycling, combustion, and landfills) that both work together and compete to perform the complete job of solid waste management

in communities. The analysis uses a number of indicators to assess market conditions and the prevalence of flow controls for these segments. The indicators include growth trends, ownership patterns, cost competitiveness, and capital requirements. These indicators are rough measures that enable an assessment of the role of flow controls in ensuring MSW management capacity and in attaining State and local goals. However, they cannot capture the realities of every specific MSW market. Due to data limitations, the report does not analyze price-cost relationships in jurisdictions with and without flow control. Appendix I-A presents a summary of public comments, some of which discuss the economic impacts of flow control.

Following is a summary of the analysis of each of the four market segments, as well as a discussion of integrated solid waste management (ISWM) systems.

COMPOSTING

The two subsegments reviewed included yard trimmings composting and mixed-waste composting. Yard trimmings composting accounts for 96 percent of this segment. From a national perspective, flow controls generally have not been an important factor in the compost segment. However, in some communities, higher tipping fees at flow control facilities have provided a funding mechanism to subsidize compost facilities.

Market Growth

The composting market segment grew from 0.5 million tons of recovered material in 1988 to over 9.2 million tons in 1992. In addition, the number of yard trimmings composting facilities increased by 361 percent between 1989 and 1993, going from 651 to 3,000 facilities. Enactment by 27 States (and the District of Columbia) of bans on landfilling of yard trimmings has fostered the rapid expansion of the composting market segment.

The trend is for continued growth in the number of yard trimmings composting facilities; such growth in the mixed waste composting sector is not as likely. Based on the following factors, the composting market segment should be capable of ensuring additional capacity independent of flow control:

- ♦ recent growth;
- ♦ an expanding number of States with bans on landfilling of yard trimmings;
- ♦ an ample supply of compostable materials and expanding end-markets especially in the agricultural sector; and
- ♦ the increasing number of governmental agencies which are establishing procurement policies that favor the purchase of compost for public spaces and parks.

Impact of Flow Controls

Although flow controls are used to guarantee waste for some of the 21 mixed waste composting facilities, EPA found no evidence that they are used widely to guarantee waste flows for yard trimmings composting facilities. However, local jurisdictions will sometimes subsidize composting facilities with part of the revenue received from the higher tipping fees at flow control facilities.

RECYCLING

The recycling market subsegments reviewed included materials recovery facilities (MRFs) and other recycling operations (i.e., independent recovered paper and paperboard dealers, industry-sponsored buy-back programs and drop-off centers, and mixed waste processing facilities). For the recycling segment, flow control has been an important factor for MRFs, particularly MRFs that require substantial capital investments. Thirty-two (32) percent of waste handled by "high technology" MRFs is supported by flow controls. An additional 50 percent of high technology MRFs have waste guaranteed through contractual arrangements, some of which may be supported by flow control.

Market Growth

Between 1985 and 1992, there was a 150 percent increase in the recycling market going from 16 million tons of recycled materials in 1985 to over 40 million tons in 1992. The growth in the recycling market is demonstrated by the following factors:

- ♦ Curbside collection programs grew from 1,000 programs in 1988 to over 6,600 programs in 1993 (568 percent increase);
- ♦ Recycling or waste reduction goals have been established in 43 States and the District of Columbia; some of these States also have banned the landfilling of recoverable items such as batteries and tires;
- ♦ The number of MRFs increased from 13 facilities in 1985 to 198 in 1992, with a 100 percent increase between 1990 and 1992.

A continuing expansion of end-market facilities that use recycled materials (e.g., paper mill deinking facilities) indicates that the recycling segment will continue to account for an increasing share of the MSW management market.

Impact of Flow Controls

EPA estimates that only 2.7 percent of the 40 million tons of recyclable materials is subject to flow controls. The analysis indicates that flow controls are not used for paper packers and buy-back/drop-off programs, which represent 85 percent of the recycling market. Conversely, flow controls do play a role in the MRF segment of the recycling market. In 1992, 13 percent of MRFs (26 facilities), with 19 percent (1.1 million tons) of the throughput, received waste guaranteed by flow control. In addition to MRFs supported by flow control, a significant amount of MRF throughput is guaranteed by contractual arrangement: 41 percent of MRF (82 facilities), with 44 percent (2.5 million tons) of total throughput. Local government may use flow control to ensure that enough waste is delivered to meet the terms of the contract.

Flow controls have been more important for high-technology MRFs than for low-technology MRFs. Flow controls direct 32 percent of the throughput at high technology MRFs (17 facilities), compared to only seven percent of throughput in low-technology MRFs (9 facilities). Another 24 MRFs were planned to be operational after 1992; these will be predominately (i.e., 17 out of 24) high-technology MRFs. Six of the high tech MRFs, with 18 percent of the throughput, are expected to be supported by flow controls. For the seven low-technology MRFs that are planned to be operational after 1992, only one is expected to be supported by flow controls. The difference in use of flow controls by high-technology and low-technology MRFs reflects the greater capital costs of the former (\$4.8 million on average) compared to the latter (\$1.9 million on average).

Flow control support of MRFs is largely regional. Of the 26 MRFs supported by flow control, 20 are located in the Northeast. The throughput of these MRFs (928,000 tons/year) represents 86 percent of the total MRF throughput nationwide that is supported by flow controls.

COMBUSTION

MSW is burned in (1) waste-to-energy (WTE) facilities that recover heat from the combustion of waste to produce either steam or electricity, and (2) incinerators that combust waste without energy recovery. Of the 32 million tons of MSW that were combusted in 1992, WTE facilities accounted for 31 million tons, and incinerators accounted for 1 million tons. **Flow controls have played a significant role in the waste-to-energy market segment, with at least 58 percent of the waste throughput supported by flow control.**

Market Growth

There was a ten-fold increase in the number of WTE facilities operating between 1980 and 1990. However, only a modest gain in the amount of waste managed by the WTE sector is expected in the future for the following reasons:

- ♦ significant slow down in the planning and construction of new WTE facilities in recent years;
- ♦ higher capital requirements due to the cost of land and pollution control measures;
- ♦ increased emphasis on recycling and waste reduction strategies;
- ♦ public opposition; and
- ♦ State moratoria.

Impact of Flow Controls

Flow controls have played a significant role in the WTE market segment. Of the 145 existing WTE facilities, 61 have waste guaranteed by flow control ordinances, representing 58 percent of total WTE throughput. One reason for this high percentage is the substantial capital investment required to construct WTE facilities, which typically are financed over long time periods. WTE facility owners

and operators need to ensure adequate, long-term supplies of waste and operate at sufficient levels of capacity in order to generate revenues to meet debt payments.

An additional 40 facilities receive waste guaranteed by contracts, representing 31 percent of the total WTE throughput. The contractual arrangements may, but need not, be supported by some form of municipal control over waste disposition: the municipality may collect the waste itself, use contracts or franchises to control the ultimate destination of waste collected, and/or enact a flow control ordinance. For example, a local government may use a flow control ordinance to ensure that enough waste is delivered to meet the terms of its contract with the facility. As a result, some of the facilities with contracts also may be backed by local governments' use of flow controls. However, data are not available currently to assess how often this situation occurs.

LANDFILLS

Historically, landfills have received the majority of solid waste generated in the United States. Landfills will continue to be important elements of ISWM systems. The Agency could find no evidence that flow controls have played a significant role in financing new landfills or landfill expansions.

Market Growth

The number of MSW landfills has declined rapidly since 1988, but this does not appear to have significantly affected total landfill capacity. Very small landfills appear to account for most landfill closings, and large, regional landfill openings and expansions have offset this lost capacity.

Anticipated growth in the composting and recycling segments, combined with source reduction efforts, likely will result in a continuing decline in the amount of waste received at MSW landfills in the future.

Impact of Flow Controls

Flow controls do not appear to have played a significant role in financing new landfills or landfill expansions. Private landfill firms have demonstrated their ability to raise substantial capital from publicly-issued equity offerings, indicating that investors are willing to provide capital for the

expansion of landfills without flow control guarantees, in response to a perceived market demand for this segment.

INTEGRATED SOLID WASTE MANAGEMENT

State and local government officials indicated at the flow controls meetings that revenues generated by flow controls are used by some local governments to support various elements of integrated solid waste management (ISWM) systems. In addition to the facilities discussed above, flow controls are used to support waste collection services such as curbside collection for recycling. Flow controls also are used to support solid waste services and practices that generally do not lend themselves to generation of their own revenues (e.g., household hazardous waste collection, source reduction programs, solid waste planning, public awareness programs, and, in limited instances, corrective action for past practices).

Where this is done, the costs of the various facility and service elements of the system are built into the tipping fee of the WTE or other facilities to which wastes are directed through flow controls. These tipping fees often are higher than the market level. Flow controls ensure that the waste goes to these facilities, rather than to facilities with lower tipping fees. The additional revenues generated by the flow control-derived tipping fees are used to fund other elements of the waste management system such as those noted above.

IN-STATE CAPACITY

Flow control is one mechanism that State and local governments can use to foster development of in-State capacity to manage municipal solid waste. Flow controls can foster local capacity by making it easier to adequately size and finance waste management facilities. Controlling the disposition of locally-generated MSW allows planners to determine more accurately how much waste must be managed. Similarly, control of the waste ensures that waste management facilities will be fully utilized, which should result in cost-efficient operations.

This Report does not assess the relative importance of flow controls, compared to other available mechanisms, for achieving in-State capacity goals. Nor was this Report designed to determine how many State and local governments consider in-State capacity to be an important goal or how much additional waste management costs (if any) would be incurred in pursuit of such a goal.

ARE ALTERNATIVES AVAILABLE OTHER THAN FLOW CONTROL?

Approaches other than flow control which are used to produce revenues for constructing and operating solid waste management facilities can be categorized as organizational and financial alternatives.

Organizational Alternatives

By using various organizational arrangements, municipalities can direct waste to specific facilities, similar to what is accomplished through flow control. One approach is for a local government to own and operate its waste collection system, delivering the waste to the facility of its choice. Another approach is for the local government to employ the private sector, through contract or franchise arrangements, for collection services. Contract or franchise agreements can incorporate specific requirements such as the frequency of collection, inclusion of recyclables, and designation of facilities to which the collected waste is to be delivered.

Special purpose districts or utilities also can be established to manage municipal solid waste. The special district or utility then would be able to provide services directly or use a contract or franchise arrangement with the private sector for services.

Financial Alternatives

Whichever organizational alternative is chosen, the question of how to pay for the system also must be addressed. The local jurisdiction can use property taxes or other general taxes as a source of funds. User fees (either uniform or variable to reflect the amount of waste thrown away) specifically designated for MSW services can be levied on the generator by the jurisdiction or the private sector provider. Finally, market-based tip fees can be charged which take into account the facility's cost and the prices charged at competing facilities.

Taxes and user fees imposed on generators provide a reliable source of revenue. Taxes may be politically unpopular, but they are relatively easy to administer and serve as the basis for issuing general obligation bonds. User fees may be seen as equitable, especially if they vary with the amount of waste thrown away, but they involve relatively greater administrative effort. Even when administered by private service providers, user fees can provide local governments with necessary

assurance of financial support when combined with long-term contracts to deliver waste to a given solid waste management facility.

Some MSW activities, such as planning and household hazardous waste collection programs, do not readily lend themselves to user charges. For example, the purpose of household hazardous waste collection programs would be defeated if user fees discouraged participation. Funding to correct environmental problems that exist at a waste management facility also may be needed. Market-based tip fees may not be able to include amounts to account for the extra costs associated with other service elements of ISWM and remain competitive. As alternatives, taxes and user fees imposed on generators are possible sources of funding for these activities.



Statement of Associated Builders and Contractors

**Associated Builders and Contractors
Statement for the Record
for the
House Small Business Committee
Hearing on
Waste Control Regulations and Small Business
September 13, 1995**

Speaking for the Merit Shop

**1300 North Seventeenth Street
Rosslyn, Virginia 22209
(703) 812-2000**

Associated Builders and Contractors (ABC) appreciates the opportunity to submit the following statement for the record for the House Small Business Committee hearing on solid waste flow control regulations and the impact on small businesses. ABC is a national trade association representing over 18,000 contractors, subcontractors, material suppliers, and related firms from across the country, and from all specialties in the construction industry. ABC's diverse membership is bound by a shared commitment to the merit shop philosophy of awarding construction contracts to the lowest responsible bidder, regardless of labor affiliation, through open and competitive bidding. This practice assures taxpayers and consumers the most value for their construction dollar. With 75 percent of construction performed today by open shop contractors, ABC is proud to be their voice.

Congress is currently considering legislation which will enable local governments to direct that municipal solid waste generated within their jurisdictions be disposed, processed, or treated at a single designated facility -- a process referred to as "flow control." ABC is concerned with the potential impact of this legislation on the construction industry and the ability of states to further regulate while establishing regional and county monopolies.

In May 1994, the U.S. Supreme Court ruled in *C.A. Carbone, Inc. V. Town of Clarkstown, New York*, that flow control laws are unconstitutional -- as an article of interstate commerce, solid waste cannot be restricted by the states without explicit Congressional authority. As a result of the

Supreme Court's decision, some local governments are seeking legislation to authorize flow control. While it may have been justified in some circumstances, flow control nevertheless it is a process which allows local governments to monopolize the waste system and precludes competition from lower-cost facilities. Other alternatives exist for state and local governments to finance solid waste management programs, rather than relying solely on flow control.

The nation's builders and contractors are genuinely concerned that expanded flow control authority will unnecessarily limit competition and result in substantial cost increases for waste management. Under flow control, the waste generated by the building and construction industry would be sent to a single, specified site. Non-competitive control of the flow of waste will virtually guarantee that generators will have to pay more for solid waste disposal.

In fact, a recent study by the National Economic Research Associates estimated that flow control increases disposal costs by an average of \$14 per ton, or 40 percent. Specifically, various disposal charges (tip fees) will be affected nationwide: flow control will add approximately \$10 per ton (33 percent) to the average landfill disposal charge, \$11.50 per ton (23 percent) for incinerator disposal charges, and \$14 per ton (33 percent) for transfer station disposal charges.

As an industry which inherently generates large volumes of solid waste, builders and contractors are significantly affected by the price of waste disposal. Like any business, the construction industry should be free to seek the best possible service at the lowest possible price for all services, including trash removal. By extending flow control authority, Congress will be

overturning the Supreme Court *Carbone* decision intended to prevent municipalities from forcing haulers to dump trash at local disposal sites. Allowing local monopolies precludes private sector competition, unfairly raises the total cost of waste disposal, and effectively functions as an indirect tax on local businesses. ABC believes Congress should not further authorize local monopolies but instead should encourage a free-market, competitive bidding process which will result in more cost-effective methods of waste disposal.

Additionally, the U.S. Environmental Protection Agency recently demonstrated that flow control laws have no environmental benefit. Instead, counties may have little economic incentive to ensure that landfills to which they direct solid waste are managed properly. Furthermore, flow control has been widely criticized by the environmental community for reducing the effectiveness of recycling by impeding the transport of post-consumer recyclables to interstate and international markets.

Ultimately, flow control is inconsistent with the principles of lower taxes, less government, free enterprise, and environmental protection. ABC is very concerned that allowing broad and unrestricted application of flow controls will indeed further limit competition and impose substantial costs on businesses and consumers. Congress should not assume the role of encouraging anti-competitive measures which essentially result in a "hidden tax." Associated Builders and Contractors sincerely appreciates the opportunity to provide our comments to the House Small Business Committee on this important matter and its impact on the nation's construction industry.

JAN MEYERS, KANSAS
Chair

JOHN J. LAFALCE, NEW YORK

Congress of the United States

House of Representatives

104th Congress

Committee on Small Business

2361 Rayburn House Office Building

Washington, DC 20515-0515

May 16, 1995

The Honorable Jere Glover
Chief Counsel for Advocacy
Small Business Administration
Washington, D.C. 20416

Dear Jere:

Last year the Supreme Court found that local governmental restrictions on municipal waste disposal (flow control) was a violation of the Commerce clause of the U.S. Constitution. (C&A Carbone, Inc. vs. Town of Clarkstown) .

There are legislative proposals which have been introduced and are being considered in both the House and Senate which may overturn the Court decision. (H.R. 1085, H.R. 1180, and S.534) Committee action is possible in the near future.

A number of small businesses in the waste disposal industry and their representatives have expressed concerns to the Small Business Committee regarding the disproportionate adverse impact upon them when flow control requirements exist. A further concern expressed is that a number of local governments who have mandates in place, in conjunction with large companies who dominate specific waste disposal practices, have an interest in overturning the Court decision without fully elaborating the totality of economic consequences upon small businesses.

I would appreciate your comments on the impact of flow control requirements on small businesses. I have enclosed some specific questions, the answers to which I believe would be useful to the Small Business Committee as well as to all members of Congress with an interest in this matter.

Sincerely,


Jan Meyers
Chair

Questions Regarding Flow Control Requirements

1. What is the history of flow control requirements? How many localities have imposed flow control requirements? In which instances must waste be disposed of at a specific facility; is a specific disposal company the only licensed hauler of waste; and is a specific price set for transportation and or disposal?
2. What percentage of commercial disposers are small business? What kinds of small business are typical disposers? Are there generalizations which can be made about the make-up of their waste? In flow control situations, do costs placed on small businesses place them at a competitive disadvantage with large company or other competitors?
3. What are the economics of flow control? What are the normal disposal options? Are the costs of disposal equal to, less than, or greater than disposal costs when flow control requirements do not exist? If disposal costs are higher, what causes the increase?
4. Has the Environmental Protection Agency determined whether flow control mandates provide any environmental benefits? Were there environmental reasons for flow control requirements when they were initially imposed? Do the same reasons continue to exist?
5. Some small businesses are concerned that flow control mandates could lead to Superfund liability if a waste disposal site is mismanaged. Is there merit to this concern? If so, how would a specific governmental requirement lead to Superfund liability?



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

MAY 26 1995

The Honorable Jan Meyers
Chair
House Committee on Small Business
Washington, DC 20515-6315

Dear Chairwoman Meyers:

Thank you for your May 16th inquiry about the effect on small business from flow control legislation (H.R. 1085 and H.R. 1180) currently being considered by the House. We do believe that flow control adversely affects small business waste haulers, and yields no environmental benefits.

Flow controls are legal provisions that allow states and local governments to designate where municipal solid waste (MSW) must be taken for processing, treatment or disposal. These controls were developed originally to ensure that an income stream for the local landfill, transfer center, or incinerator was maintained to support the processing of the MSW. Sometimes, the fee was also designated to pay off the bond for construction of the facility, and to support other related programs, such as recycling or composting.

Thirty nine states authorize flow control in some form. There is no available information on the number of local communities that employ the flow control authority. However, in C&A Carbone, Inc. vs. Town of Clarkstown, the Supreme Court ruled last year that flow control requirements were illegal in the absence of specific Congressional authorization. The Senate passed such legislation last week, and the House Commerce Committee is currently considering legislation.

Flow control has been used to allow local governments to efficiently plan for and fund their solid waste management systems. However, flow control requirements add to the cost of disposal and treatment, and are not necessary to maintain sound solid waste management systems. Under flow control, the small business hauler is required to use the locally mandated landfill or incinerator, irrespective of whether a cheaper landfill or incinerator is otherwise available. In general, these flow control requirements impose an unreasonable tax on small business (and large business) haulers who are denied the choice of a less expensive option for solid waste disposal.

The May 1995 flow control report by the National Economic Research Associates, prepared for Browning-Ferris Industries, has quantified these additional expenses. Flow control adds \$10/ton or 33 percent to the average landfill disposal fee; \$11.50/ton or 23% to the average incinerator; and \$14/ton or 33% to the average transfer station fee. These are considerable sums, amounting to a minimum of hundreds of millions of dollars in excess fees on a nationwide basis.

The waste management disposal industry is composed of thousands of firms, all but handful with less than 500 employees. These additional tipping fees that the small waste hauler must pay is either passed along to the households or businesses or taken from profit. Larger firms can spread these additional costs over all its customers, those in flow control jurisdictions and those who are not. This is not generally true of the smaller firms that tend to operate in smaller areas. This places a disproportionate burden on the smaller haulers.

Flow control hides the true costs of managing solid waste because all the costs are combined in one fee that may cover more than the disposal fee, such as for a recycling or composting program. It is a hidden consumer tax because the disposal fees are often not separated from the fees which supports the additional programs, which are normally supported by a separate fee or tax. This also creates cross-subsidies, since the additional revenue pays for services that some consumers are receiving, and others not. Prohibiting flow control allows the free market to lower costs to both haulers and consumers.

While it may impose a hardship on local governments to prohibit flow control where the financial commitments have already been made, this rationale does not justify its future application. As the Environmental Protection Agency (EPA) points out, the localities have alternatives to flow control to administer their solid waste management programs, without establishing local waste monopolies.

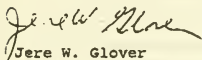
Although flow controls might be viewed as being beneficial to the environment, EPA concluded in its March 1995 Report to Congress on Flow Control and Municipal Solid Waste that flow control requirements yielded no environmental benefits. Protection of human health and the environment is directly governed by federal, state and local regulations which arise from the enactment of the Resource Conservation and Recovery Act, and the Clean Air and Clean Water Acts. These do not depend in any way on the existence of flow control. Thus, EPA concluded that flow control did not contribute to environmental protection.

In addition, the existence of flow control increases the risk of Superfund liability for the transporter. A monopoly facility, unlike its competitors, has less incentive to properly manage the site. Under the Superfund law, transporters of waste to a Superfund site may be liable for cleanup costs. The waste hauler subject to flow control cannot choose which waste disposal facility uses the most sound environmental practices.

In sum, flow control costs money to the small business haulers, and possibly subjects them to Superfund liability. Although local governments argue that their financial condition would be jeopardized by the retroactive lifting of flow controls, this argument does not apply to the future application of flow controls. Therefore, from the public policy viewpoint, it makes the most sense to limit flow control monopolies to localities where revenue bonds have already been issued.

We are pleased to be able to address this small business issue. Feel free to contact me or my staff if you have any other questions.

Sincerely,



Jere W. Glover
Chief Counsel for Advocacy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Honorable Jan Meyers, Chairman
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

Dear Madam Chairman:

I am writing to clarify a point of possible confusion regarding the testimony by the Committee on Small Business at the September 13, 1995, hearing on solid waste flow control. In his written testimony for that hearing, Jere Glover, the Chief Counsel for Advocacy for the U.S. Small Business Administration, stated that, "the existence of flow control increases the risk of Superfund liability for the transporter." Later in his testimony, he also stated that, "Michael Shapiro, the EPA Director of the Office of Solid Waste, appearing with me today, can expound further on these environmental issues." A reader of these statements from Mr. Glover's testimony could incorrectly infer that EPA agrees with Mr. Glover's interpretation that the existence of flow control increases the risk of Superfund liability for the transporter.

The data collected by EPA for the March 1995 "Report to Congress on Flow Control and Municipal Solid Waste" does not support the conclusion that flow control increases the risk of Superfund liability for waste transporters. EPA has not determined that flow control either increases or decreases the risk of Superfund liability for waste transporters.

I hope that this clarification is helpful to the Committee as you continue your examination of solid waste flow control. I respectfully request that this letter be included in the printed hearing record, and thank you for the opportunity to participate in the Committee's consideration of this issue.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste



AMERICANS FOR TAX REFORM

Grover G. Norquist
President

August 28, 1995

The Honorable Fred Upton
2333 Rayburn House Office Building
Washington, DC 20515

Re: Flow Control Legislation scheduled to come before the Commerce
Committee on September 13, 1995

Dear Representative Upton:

A vote to reinstate the practice of flow control is a vote to raise taxes. We will make sure that the American people understand that this is the case.

Flow control, the practice of allowing regional authorities to set up government-run monopolies with regard to trash disposal, is wasteful and inefficient. It promotes graft and costs taxpayers millions of dollars each year. These authorities impose unfunded mandates on municipalities and businesses by dictating where those entities must dump their trash, then setting prices for disposal at levels well above market prices.

Flow control is nothing more than a trash tax. It can be used as a tool by big-government tax-and-spend politicians who are too cowardly to vote for a visible tax increase.

In 1994, the Supreme Court struck down flow control legislation as undue interference with interstate commerce. Unless Congress specifically passes legislation to the contrary, flow control will die a quick and well-deserved death.

Americans for Tax Reform strongly urges you to protect American taxpayers. We urge you to make sure that legislation reinstating flow control is not passed.

Sincerely,

Grover G. Norquist

1320 18th STREET NW, SUITE 200, WASHINGTON DC 20036
PHONE 202/785-0266 FAX 202/785-0261

The Cost of Flow Control

Prepared by:
National Economic Research Associates

Prepared for:
Browning-Ferris Industries

May 3, 1995

nera
Consulting Economists

The Cost of Flow Control

I. INTRODUCTION AND SUMMARY

Congress is currently considering legislation to enable local governments to designate the destination of municipal solid waste generated within their jurisdictions—often referred to as flow control—in response to a recent U.S. Supreme Court decision, *C.A. Carbone, Inc. v Town of Clarkstown, New York* which effectively prevents local governments from imposing such controls. Browning Ferris Industries (BFI) and many other members of the solid waste industry, as well as some local government officials, are concerned that while flow controls may have been justified in some circumstances, unrestricted application of such controls in the future will discourage competition and impose substantial costs on consumers. Based on this concern, BFI retained National Economic Research Associates (NERA) to estimate the costs imposed by flow control on consumers.

NERA conducted an econometric study of disposal charges (tip fees), relying on data for over 4,000 waste management facilities (landfills, incinerators and transfer stations) collected by Chartwell Publishing, to determine whether flow controls increase disposal costs, and if so, by how much.¹ NERA found that flow controls increase disposal costs on average of \$14 per ton or 40 percent. More specifically, NERA found:

- Flow control adds approximately \$10 per ton or 33 percent to the average landfill disposal charge (tip fee) nationwide.
- Flow control adds approximately \$11.50 per ton or 23 percent to the average incinerator disposal charge (tip fee) nationwide.

¹Chartwell publishes the Solid Waste Price Digest, the most comprehensive disposal charge record available.

- Flow control adds approximately \$14 per ton or 33 percent to the average transfer station disposal charge (tip fee) nationwide.

These results are summarized in Table 1 and Figure 1.

NERA also conducted several case studies and reviewed case studies conducted by other organizations. These studies provided further support for the conclusion that flow control increases disposal costs.

These findings are not surprising. Flow control is generally made necessary precisely because waste would otherwise be shipped elsewhere to save on disposal costs. Consequently, unless there are benefits associated with flow control which exceed the higher disposal costs, flow control cannot be justified on economic grounds. Flow control proponents have not identified benefits of this magnitude aside perhaps from protecting existing local government financial obligations associated with waste management facilities built assuming flow control. The U.S. Environmental Protection Agency's (EPA) recent report to Congress on flow control, for example, did not find controls necessary to achieve public health and environmental goals.

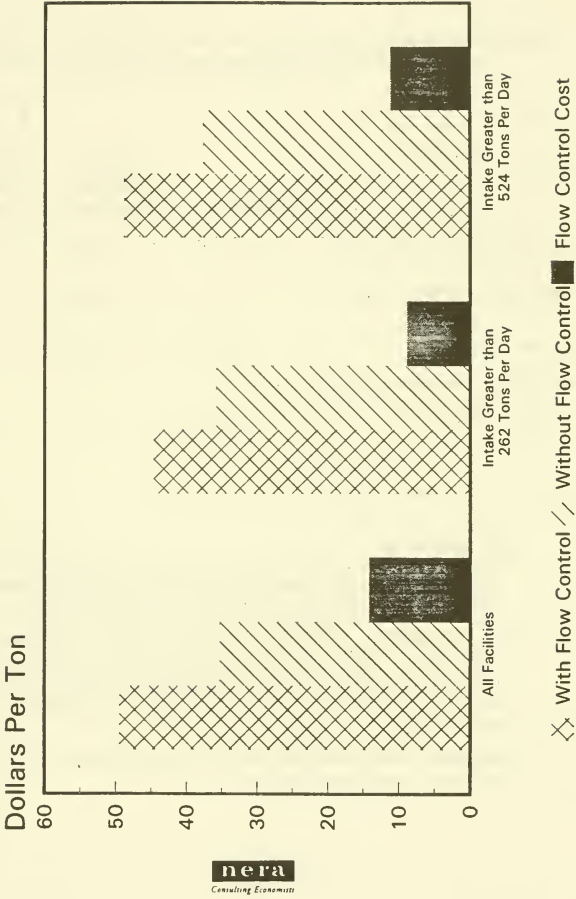
The remainder of this report is organized as follows. Section II presents a brief background on the flow control debate. Section III explains the methodology and data used in the econometric analysis. Section IV presents the results of the analysis. Section V reviews the case study evidence. Appendix A provides additional detail on the results of the econometric analysis. Appendix B describes NERA's qualifications.

II. BACKGROUND

Flow control refers to local laws by which local governments direct that the municipal solid waste (including residential, commercial and industrial) generated within their jurisdictions be disposed of and/or processed at designated facilities. Local governments have been imposing such controls since at least the early 1970's, principally for two reasons—to protect sizable investments in waste facilities and to generate fee revenues to finance solid waste programs. Many local governments built and/or financed large scale waste management facilities which require substantial minimum waste flows to cover costs. Many of these facilities, for example, are resource recovery

- 3 -

AVERAGE TIP FEE WITH AND WITHOUT FLOW CONTROL Across All Types of Facilities



AVERAGE TIP FEE WITH AND WITHOUT FLOW CONTROL
 Across All Types of Facilities (Landfills, Incinerators, Transfer Stations)
 (\$/ton)

	All Facilities	Facilities With Intakes Greater Than 262 Tons Per Day	Facilities With Intakes Greater Than 524 Tons Per Day
(1) Average Tip Fee With Flow Control	\$49.49	\$44.71	\$48.92
(2) Average Tip Fee Without Flow Control	\$35.31	\$35.85	\$37.76
(3) Flow Control Cost	\$14.18	\$8.86	\$11.16
(4) Percent Increase in the Average Tip Fee With Flow Control Due to Flow Control [Row (3) ÷ Row (2)]	40.16%	24.71%	29.57%

Notes and Sources

These values are based on a regression analysis of tip fees using data from Chartwell Information Publishers. Browning-Ferris Industries identified which facilities are subject to flow control. Population density data is from the U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States: 1993*, (113th edition.) Washington, DC, 1993, Table No. 31. The values presented are mean values determined by the following equation: tip fee = f(mean state population density, existence of flow controls). The mean population density for all facilities is 193.025 persons per square mile. For facilities whose intake is greater than 262 tons per day, it is 201.681 persons per square mile. For facilities whose intake is greater than 524 tons per day, it is 235.868 persons per square mile.

Observations are further restricted to facilities which have tip fees greater than 0 and remaining capacity greater than 1 year.

plants which operate under contracts to provide steam for industrial processes and electricity generation. Some of these plants would not be economic without these contracts, and the contracts require that they provide a specific amount of steam requiring a specific amount of waste. Consequently, local governments need to direct waste to these plants to protect their investments. In fact, according to the *Resource Recovery Yearbook* about 48% of the resource recovery plants constructed since 1964 benefit from flow controls.² More recently, local governments have financed and built transfer stations and material recovery facilities. These facilities, especially the latter, also require substantial waste flows to be economic. Public landfills have been less reliant on flow controls, although economies of scale may encourage larger facilities. Some local governments also have turned to flow control to generate fee revenues often used to finance waste management programs such as recycling and household hazardous waste. Without flow control, waste generators could avoid such fees by turning to alternative disposal options in other jurisdictions.

Although flow controls have been imposed for over 20 years, they have only recently become a serious concern as the variety and accessibility of alternatives has increased. The private sector responded to rapidly rising disposal costs in the mid-1980s to the early 1990s by building more disposal capacity. While the number of landfills in the U.S. has dropped rather dramatically, landfill capacity has not. In fact, capacity has been increasing in many regions of the country.³ As a result, disposal charges are no longer increasing, but rather falling as disposal facilities compete for business. In addition, the disparity has been exacerbated by local governments relying on flow control to finance recycling and other waste management programs. Local governments have imposed fees and surcharges at flow control facilities. Third, some governments became more aggressive regarding flow control as waste streams diminished at least in part because of government regulations and programs. Paper recycling, for example, has eliminated an important fuel stock from resource recovery plants.

The costs imposed by flow control have led to a series of lawsuits primarily by private haulers against local governments. The U.S. Supreme Court has heard several of these cases, finding in each instance that flow controls violated the Constitution's commerce clause. The Court's most recent decision, *C & A Carbone, Inc. v. Town of Clarkstown, New York* (No. 114 S. Ct. 1677 (1994)),

²Another 47 guarantee sufficient waste flow via contracts.

³See, for example, U.S. EPA, "Flow Controls and Municipal Solid Waste," Report to Congress, March 1995, EPA530-R-95-008.

has prompted flow control proponents to petition Congress for relief. Proponents contend that flow control is necessary to protect the financial obligations that many local governments have made. Proponents also contend that because local governments must by law provide solid waste services, they must also be empowered to control the flow of waste. Following this argument, each local jurisdiction must be responsible for the waste generated within its borders.

While opponents have emphasized the cost of flow control, there has been surprisingly little analysis done to demonstrate this. The available evidence is largely anecdotal—case studies showing the availability of low cost alternatives to waste generators currently restricted by flow control. Although these case studies are useful, there has been no broad-based study to establish the magnitude of the costs imposed by flow control. BFI retained NERA to address this gap.

III. ECONOMETRIC METHOD USED TO ESTIMATE THE COST OF FLOW CONTROL

A. Method

We relied upon a statistical technique referred to as multiple regression analysis to measure the impact of flow control on tipping fees.⁴ This technique enables us to isolate the impact of flow control from other factors which influence tipping fees. The multiple regression analysis was performed in three steps. First, the relevant variables were identified and the relationship expected between the dependent and independent variables was determined.⁵ Second, data on the variables were obtained. In this case, data on tipping fees by technology, facility ownership, facility site and population were obtained. Third, the specific relationships among the variables were examined through the use of multiple regression analysis.

The regression technique is best demonstrated by an examination of how it is used to estimate the relationship between a single independent variable and a dependent variable. For example, regression analysis may be used to estimate the relationship between landfill tipping fees

⁴For a detailed explanation of regression analysis, see, for example, R. Pindyck and D. Rubinfeld, *Economic Models and Economic Forecasts*, Third Edition, McGraw Hill, 1986.

⁵For expositional convenience, the variable for which one is interested in making an estimate in regression is referred to as the dependent variable and the determinants of the dependent variable as the independent variables.

and population density. As a first step, the analyst determines how he or she expects the variables to relate. This would lead to specifying a regression equation which could be written as:

$$\text{Tipping Fee} = b_0 + b_1 \times \text{population density} \quad (\text{eq. 1})$$

The symbols b_0 and b_1 are called "coefficients." The b_0 coefficient (also known as the "intercept term") represents attendance with no population (although, in fact, of course, there is always population). The b_1 coefficient represents the value of the effect on tipping fee of an increase in population density of one unit (one more person per square mile in this example).

The second step is to obtain data for a sample of tipping fees and population densities. Figure B-1 is a graph of the observations for a hypothetical sample of such data. The vertical axis in this graph describes tipping fee, the horizontal axis describes population density and each of the data points (the triangles) in the graph indicates a single observation of tipping fee and population density. From this scatter diagram it is evident that, while there is considerable dispersion to the points, there is generally a direct relationship between tipping fee and population density—the greater the population density, the greater the tipping fee.

The third step is to establish a more precise relationship between population density and tipping fee. Through regression analysis, a line can be estimated which describes the average relationship between tipping fee and population density—a line that best "fits" the pattern of data points. Such a regression line has been plotted in Figure 2. The "best fit" line can then be described in equation form. For example, the data in Figure show that the line of best fit is as follows:

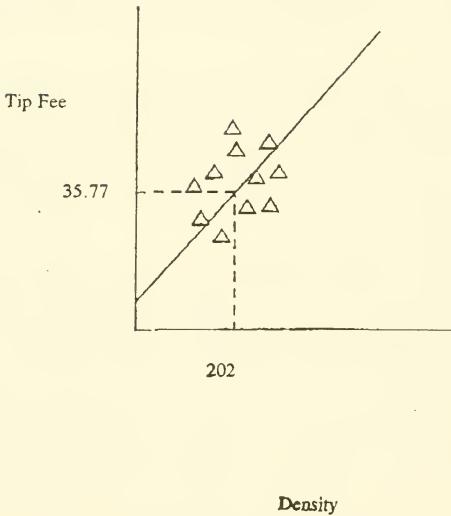
$$\text{Tipping Fee} = 25.67 + 0.05 \times \text{Density} \quad (\text{eq.2})$$

The 25.67 corresponds to the b_0 coefficient and represents the expected tipping fee from the hypothetical sample transactions without accounting for the effect of density. The 0.05 corresponds to the b_1 coefficient and indicates that for every additional unit of density, tipping fee increases by 0.05 dollars per ton. For example, the equation predicts that with a population density of 202, tipping fees would be \$35.77.

Using the regression coefficients, one can estimate the value of the dependent variable for any actual or hypothetical combination of independent variables. To make such an estimate, one multiplies the values of the independent variables by the respective regression coefficients, sums the

The Relationship Of Tip Fee And Density

$$\text{Tip Fee} = 25.67 + .05 * \text{Density}$$



result and adds the regression coefficient representing the intercept (b_0). For this study, we examined the impact of flow control on tipping fee by specifying the following equation:

$$A_i = b_0 + b_1x_1 + b_2x_2 + b_{n+1}x_{n+1} + E \quad (\text{eq.3})$$

Where A_i represents the tipping fee by disposal technology (landfill, incinerators and transfer station), the b 's represent the regression coefficients to be estimated and the x 's represent various characteristics or factors we expect to affect tipping fees. E represents the unexplained error. These characteristics include population density, facility ownership (public or private), facility operator (public or private), daily capacity, location (state, census region, etc.), and the presence of flow control. Population density serves as a proxy for several factors which are likely to have a positive impact on tipping fees. High density will reflect higher demand for disposal and higher land costs. Fees may also vary by facility ownership. Public facilities may be lower cost because of lower cost financing or subsidized rates. Public or private management may also affect fees, although the direction of the impact is unclear. Location may also affect fees, reflecting differences in regulation or local fees and taxes. Finally, based on the preponderance of anecdotal evidence reviewed and the perceived need for flow control to keep waste local, we expect flow control to have a positive effect on tipping fees.

B. Data

We relied on tipping fee data collected by Chartwell Publishing for publication in the *Solid Waste Price Digest*. Chartwell surveys disposal facilities on a regular basis—as frequently as monthly for large facilities. This data identifies over 4,000 facilities by name, location, facility type (landfill, incinerator and transfer station), ownership, operator (public or private) and tipping fee. We relied on fees updated during the first quarter of 1995. Chartwell did not identify which facilities operated under flow control. We collected this information with the assistance of BFI regional managers. We confirmed the presence of flow control at incinerators by reference to the *Resource Recovery Yearbook, 1993 Edition*. The share of incinerators reported to have flow control was 48 percent compared to the Yearbook's 43 percent. The presence of flow control at landfills and transfer stations was more difficult to confirm. The share of landfills and transfer stations with flow control, however, appear reasonably consistent with the shares reported by U.S. EPA in its report to Congress on flow control. EPA reported that landfills did not frequently rely on flow

control. Our data showed that about 13.5 percent of landfills had flow control. EPA reported that about 19 percent of materials handled by MRFs were subject to flow control. Our data indicated that about 29 percent of the transfer facilities (many of which presumably are MRFs) were subject to flow control.

The *Resource Recovery Yearbook* also provided us with an alternative data set for incinerator tipping fees. These data were used to confirm the results based on the Chartwell price and BFI supplied flow control information.

IV. RESULTS

The regression analysis conducted on the data described above demonstrated that flow control has a statistically significant positive impact on tipping fees. This finding holds regardless of density, ownership, operator, size and technology. On average, flow control adds \$14 per ton to tipping fees or a 40 percent increase. Note that this does not mean that flow control always results in higher fees, but that on average, one would expect higher fees if flow control were imposed.

Table 2 and Figure 3 summarize the results for landfills. Regressions were run accounting for landfill daily capacity or intake. As shown, flow control adds about \$10 per ton across all landfill sizes, and between \$4 and \$6 if we restrict the analysis to larger landfills.

Table 3 and Figure 4 summarize the results for incinerators. Regressions were run accounting for incinerator daily capacity. As shown, flow control adds about \$11.50 per ton to tipping fees across all incinerator sizes and between \$7.40 and \$13.25 for large facilities.

Table 4 and Figure 5 summarize the results for transfer stations. Regressions were run accounting for transfer station daily capacity. As shown, flow control adds about \$14 per ton to transfer stations across all sizes and between \$12.17 and \$16.38 if we restrict the analysis to larger transfer stations.

TABLE 2

AVERAGE LANDFILL TIP FEE
With and Without Flow Control
(\$/ton)

	All Facilities	Facilities With Intakes Greater Than 262 Tons Per Day	Facilities With Intakes Greater Than 524 Tons Per Day
(1) Average Tip Fee With Flow Control	\$40.34	\$35.37	\$39.09
(2) Average Tip Fee Without Flow Control	\$30.38	\$31.11	\$32.98
(3) Flow Control Cost	\$9.96	\$4.26	\$6.11
(4) Percent Increase in the Average Tip Fee With Flow Control Due to Flow Control [Row (3) ÷ Row (2)]	32.78%	13.70%	18.52%

Notes and Sources

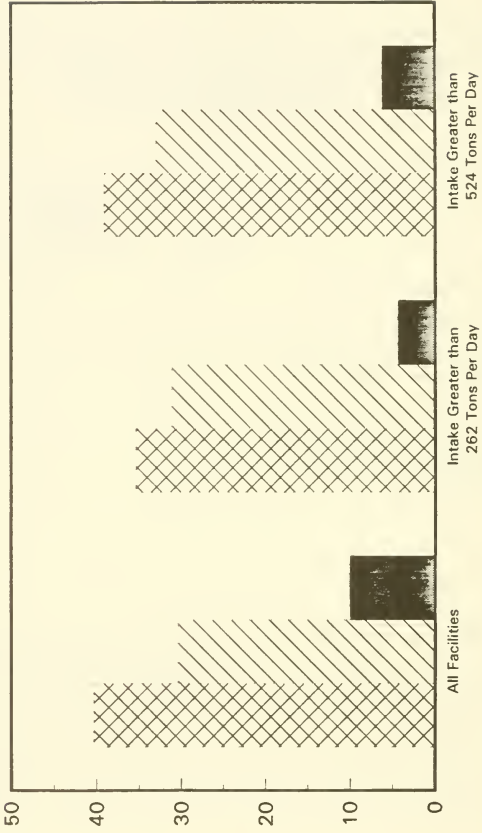
These values are based on a regression analysis of tip fees using data from Chartwell Information Publishers. Browning-Ferris Industries identified which facilities are subject to flow control. Population density data is from the U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States: 1993*, (113th edition.) Washington, DC, 1993, Table No. 31. The values presented are mean values determined by the following equation: tip fee= f(mean state population density, existence of flow controls). The mean population density for all facilities is 145.382 persons per square mile. For facilities whose intake is greater than 262 tons per day, it is 159.454 persons per square mile. For facilities whose intake is greater than 524 tons per day, it is 181.002 persons per square mile.

Observations are further restricted to facilities which have tip fees greater than 0 and remaining capacity greater than 1 year.

AVERAGE LANDFILL TIP FEE

With and Without Flow Control

Dollars Per Ton



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Consulting Economists

✕ With Flow Control // Without Flow Control Cost

AVERAGE INCINERATOR TIP FEE

With and Without Flow Control
(\$/ton)

	All Facilities	Facilities With Intakes Greater Than 262 Tons Per Day	Facilities With Intakes Greater Than 524 Tons Per Day
(1) Average Tip Fee With Flow Control	\$60.63	\$62.30	\$61.46
(2) Average Tip Fee Without Flow Control	\$49.16	\$45.92	\$48.99
(3) Flow Control Cost	\$11.46	\$16.38	\$12.47
(4) Percent Increase in the Average Tip Fee With Flow Control Due to Flow Control [Row (3) ÷ Row (2)]	23.32%	35.66%	25.45%

Notes and Sources

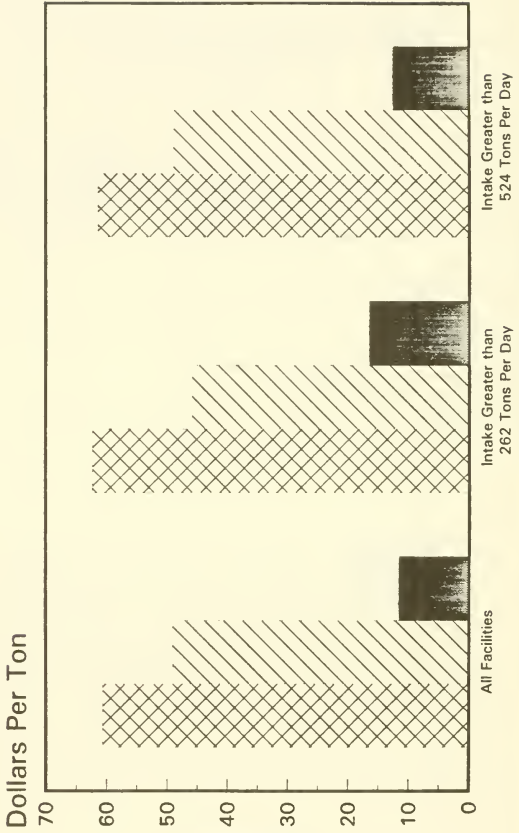
These values are based on a regression analysis of tip fees using data from Chartwell Information Publishers. Browning-Ferris Industries identified which facilities are subject to flow control. Population density data is from the U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States: 1993*, (113th edition.)

Washington, DC, 1993, Table No. 31. The values presented are mean values determined by the following equation: tip fee = f(mean state population density, existence of flow controls). The mean population density for all facilities is 237.335 persons per square mile. For facilities whose intake is greater than 262 tons per day, it is 312.284 persons per square mile. For facilities whose intake is greater than 524 tons per day, it is 342.692 persons per square mile.

Observations are further restricted to facilities which have tip fees greater than 0 and remaining capacity greater than 1 year.

AVERAGE INCINERATOR TIP FEE

With and Without Flow Control



nera
Consulting Economists

✕ With Flow Control // Without Flow Control ■ Flow Control Cost

AVERAGE TRANSFER STATION TIP FEE
With and Without Flow Control
(\$/ton)

	<u>All Facilities</u>	<u>Facilities With Intakes Greater Than 262 Tons Per Day</u>	<u>Facilities With Intakes Greater Than 524 Tons Per Day</u>
(1) Average Tip Fee With Flow Control	\$57.20	\$52.89	\$57.67
(2) Average Tip Fee Without Flow Control	\$43.08	\$45.47	\$44.41
(3) Flow Control Cost	\$14.12	\$7.43	\$13.25
(4) Percent Increase in the Average Tip Fee With Flow Control Due to Flow Control [Row (3) ÷ Row (2)]	32.78%	16.34%	29.84%

Notes and Sources

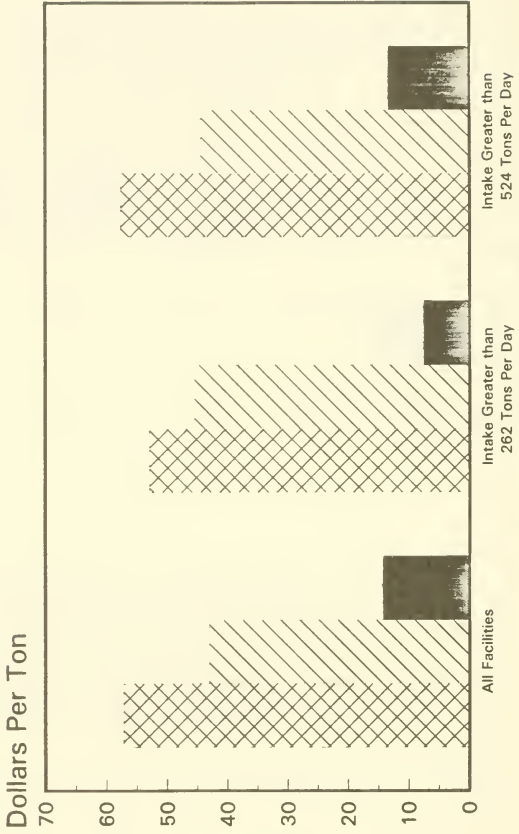
These values are based on a regression analysis of tip fees using data from Chartwell Information Publishers. Browning-Ferris Industries identified which facilities are subject to flow control. Population density data is from the U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States: 1993*, (113th edition.)

Washington, DC, 1993, Table No. 31. The values presented are mean values determined by the following equation: tip fee = $f(\text{mean state population density, existence of flow controls})$. The mean population density for all facilities is 259.825 persons per square mile. For facilities whose intake is greater than 262 tons per day, it is 251.678 persons per square mile. For facilities whose intake is greater than 524 tons per day, it is 270.267 persons per square mile.




Observations are further restricted to facilities which have tip fees greater than 0 and remaining capacity greater than 1 year.

AVERAGE TRANSFER STATION TIP FEE

With and Without Flow Control



nera
Consulting Engineers

 With Flow Control
  Without Flow Control
  Flow Control Cost

V. CASE STUDIES

In addition to the econometric analysis, we studied disposal/processing alternatives at three locations—Medina County, Ohio; Des Moines, Iowa; and Onondaga County, New York—comparing the tipping fee at flow control facilities to other nearby facilities, accounting for transportation costs. We also reviewed case studies conducted by other organizations. The additional case studies and our review confirm the results of our econometric analysis.

Two of the three case studies we conducted—in Medina and Onondaga Counties—showed that if local waste generators were free to shop for disposal sites, they could reduce tipping fees by about \$20 on average. In Des Moines, however, the tipping fee at the flow control facility was quite modest and in fact lower than the nearby alternatives. This is consistent with statistical results. Not all flow control facilities are more expensive. The results of these case study comparisons are presented in Tables 5, 6, and 7.

We reviewed flow control case studies conducted by other organizations including flows and data presented in various legal cases including C&A Carbone. These studies present flow control costs which equal or exceed those determined in this econometric analysis.

**FLOW CONTROL IN MEDINA COUNTY, OHIO PREVENTS WASTE GENERATORS
FROM SAVING APPROXIMATELY \$20 PER TON**

Name of Disposal Facility	Type	Tip Fee (\$/ton)	Cost per Ton/Mile (\$)	Distance to Facility (miles)	Total Cost (\$/ton) (3)+(4)x(5)
(1)	(2)	(3)	(4)	(5)	(6)
(1) Medina County MRF	TS	58.00	0.057	0	58.00
(2) American Landfill	LF	25.00	0.057	45	27.56
(3) Mahoning Landfill	LF	25.00	0.057	60	28.41
(4) City of East Liverpool Landfill	LF	26.01	0.057	70	29.99
(5) R.C. Miller Transfer Station	TS	28.71	0.057	35	30.70
(6) BFI/Carbon Limestone Sanitary Landfill	LF	30.00	0.057	50	32.84
(7) BFI/Lorain County Landfill	LF	34.47	0.057	20	35.61
(8) Laidlaw/Cherokee Run-Bellefontaine Landfill	LF	30.00	0.057	110	36.25
(9) Athens-Hocking (Kilbarger) Landfill	LF	30.00	0.057	120	36.82
(10) Laidlaw/Williams County Landfill	LF	31.00	0.057	140	38.95
(11) WMI/Evergreen Recycling & Disposal Landfill	LF	35.55	0.057	90	40.66
(12) Royalton Road Sanitary Landfill	LF	43.50	0.057	15	44.35
(13) Northern Ohio Waste Transfer Station	TS	46.60	0.057	15	47.45
(14) Doherty Landfill	LF	47.50	0.057	70	51.48
(15) Average of Alternate Disposal Facilities					37.01
(16) Difference [(Row (1)) - (Row (15))]					20.99

Sources and Notes

Row (1): Based on Browning-Ferris Industries memo regarding flow control in Medina, Ohio, dated April 19, 1995

Rows (2) through (14): Based on data from Chartwell Information Publishers and Browning-Ferris Industries

Column (4): Cost per mile based on Konheim and Ketcham's rate of \$1.25 for a tractor/trailer rig. It is assumed that each rig holds 22 tons. The cost per mile is \$1.25/22 tons, or \$0.057. *Exporting Waste: A Report on Locations, Quantities and Costs of Out-of-City/State Disposal of New York City Commercial Waste*, Konheim & Ketcham, April 1991.

Column (5): Distance to facility based on American Map Corporation, *Finstripe Business Control Atlas 1992*

This list includes facilities within 150 miles of Medina, OH. It does not include the following facilities since their locations were unknown: Coshocton Landfill, Inc. and WMI/Suburban South Landfill.

All facilities except the Medina County MRF are privately-owned. All facilities are subject to flow control, however, the alternate facilities listed indicated that they accepted out-of-county waste. Facilities are restricted to those whose intake is greater than 262 tons per day.

TABLE 6

**FLOW CONTROL IN ONONDAGA COUNTY, NEW YORK PREVENTS WASTE GENERATORS
FROM SAVING APPROXIMATELY \$20 PER TON**

Name of Disposal Facility	Type	Tip Fee (\$/ton)	Cost per Ton/Mile (\$)	Distance to Facility (miles)	Total Cost (\$/ton) (3)+[(4)x(5)]
(1)	(2)	(3)	(4)	(5)	(6)
(1) Onondaga County Resource Recovery Facility	IN	93.50	0.057	0	93.50
(2) Charles Point R&R Facility Incinerator	IN	53.75	0.057	185	64.26
(3) Modern Landfill	LF	58.26	0.057	150	66.78
(4) Energy From Waste/American Ref-fuel Niagra Facility	IN	60.00	0.057	150	68.52
(5) WMI/High Acres Sanitary Landfill	LF	65.00	0.057	70	68.98
(6) American Ref-fuel WTE Incinerator	IN	69.00	0.057	210	80.93
(7) Adirondack Resource Recovery Facility Incinerator	IN	85.00	0.057	135	92.67
(8) Average of Alternate Disposal Facilities					73.69
(9) Difference [Row (1) - Row (8)]					19.81

Sources and Notes

Row (1): Based on Browning-Ferris Industries memo regarding "Flow Control in Syracuse" dated April 19, 1995.

Rows (2) through (7): Based on data from Chartwell Information Publishers and Browning-Ferris Industries.

Column (4): Cost per mile based on Konheim and Ketcham's rate of \$1.25 for a tractor/trailer rig. It is assumed that each rig holds 22 tons. The cost per mile is \$1.25/22 tons, or \$0.057. *Exporting Waste: A Report on Locations, Quantities and Costs of Out-of-City/State Disposal of New York City Commercial Waste*, Konheim & Ketcham, April 1991.

Column (5): Distance to facility based on American Map Corporation, *Pinstripe Business Control Atlas 1992*. Alternate facilities are limited to those whose intake is greater than 262 tons per day.

All facilities except Onondaga County Resource Recovery Facility are privately-owned. All facilities except Modern Landfill are subject to flow control. The list does not include CID Sanitary Landfill since its location is unknown.

TABLE 7

**FLOW CONTROL IN DES MOINES, IOWA
DOES NOT INCREASE DISPOSAL COSTS**

Name of Disposal Facility	Type	Tip Fee (\$/ton)	Cost per Ton/Mile (\$)	Distance to Facility (miles)	Total Cost (\$/ton) (3)+[(4)x(5)]
(1)	(2)	(3)	(4)	(5)	(6)
(1) Metro Park East Landfill	LF	25.00	0.057	0	25.00
(2) Metro Transfer Station	TS	25.00	0.057	0	25.00
(3) Delaware County Sanitary Landfill	LF	7.50	0.057	135	15.17
(4) North Dallas Sanitary Landfill	LF	14.00	0.057	30	15.70
(5) Cerro Gordo County/Landfill North Iowa	LF	16.00	0.057	110	22.25
(6) Dickinson County Sanitary Landfill	LF	18.00	0.057	150	26.52
(7) Tri-County Disposal Transfer Station	TS	18.00	0.057	160	27.09
(8) Ames-Story Environmental Corp. Landfill	LF	28.71	0.057	30	30.41
(9) Palo Alto County Sanitary Landfill	LF	28.00	0.057	120	34.82
(10) Winnebago County Sanitary Landfill	LF	30.00	0.057	130	37.39
(11) Cass County Sanitary Landfill	LF	50.00	0.057	70	53.98
(12) Average of Alternate Disposal Facilities					29.26
[(13) Difference [(Rows (1)+(2)/2) - Row (12)]]					(4.26)

Sources and Notes

Rows (1) and (2). Based on data from Browning-Ferris Industries memo regarding "Flow Control Study Information" dated April 19, 1995.

Rows (3) through (11): Based on data from Chartwell Information Publishers and Browning-Ferris Industries.

Column (4): Cost per mile based on Konheim and Ketcham's rate of \$1.25 for a tractor/trailer rig. It is assumed that each rig holds 22 tons. The cost per mile is \$1.25/22 tons, or \$0.057. *Exporting Waste: A Report on Locations, Quantities and Costs of Out-of-City/State Disposal of New York City Commercial Waste*, Konheim & Ketcham, April 1991.

Column (5): Distance to facility based on American Map Corporation, *Pinstripe Business Control Atlas 1992*.

All facilities except the Metro Park East Landfill and the Metro Transfer Station are privately-owned and are not subject to flow control.

ATTACHMENT A



Consulting Economists

REGRESSION OUTPUT EXAMPLE

```
. use c:\biflow\data\newdata
```

```
. keep if ntip>0 & nyears>1
(355 observations deleted)
```

```
. keep if nintake>262
(2814 observations deleted)
```

```
. regress ntip bfiflodm density
```

Source	SS	df	MS
Model	200823.017	2	100411.509
Residual	241404.693	1089	221.675568
Total	442227.711	1091	405.341623

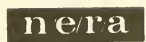
Number of obs	=	1092
F(2, 1089)	=	452.97
Prob > F	=	0.0000
R-squared	=	0.4541
Adj R-squared	=	0.4531
Root MSE	=	14.889

	ntip	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
bfiflodm		8.859355	1.124747	7.877	0.000	6.652439	11.06627
density		.050483	.0021741	23.220	0.000	.0462172	.0547489
_cons		25.66593	.6136401	41.826	0.000	24.46168	26.86998

```
. sum density
```

Variable	Obs	Mean	Std. Dev.	Min	Max
density	1197	201.6807	351.1246	1	9649.5

ATTACHMENT B



Consulting Economists

National Economic Research Associates, Inc. (NERA) was founded in 1961 to provide business, government and the legal profession with research and analysis in microeconomics — a field that encompasses price and cost determination, the behavior of firms and consumers, and the impact of competition and regulation upon the efficiency of firms, markets and the economy as a whole.

Generations of students had studied microeconomics, but before the 1960s few realized how pervasive its influence would become. Increasingly over the past three decades, this discipline has become the foundation for sound reasoning about resource allocation in the modern economy. Recent progress in deregulation, privatization, the rationalization of antitrust and trade policy, and strategic planning can be attributed, in large part, to the insights of this field. Today, most leaders in business, government and commercial law draw on the findings of modern economics to deepen their understanding of how firms and markets function.

NERA has played a consistent and important role in expanding the practical applications of microeconomics. Our economists were among the first to show how the theoretical insights of this field, when combined with real-world data, can provide solutions to complex problems. Whether presented in the form of testimony at trials or hearings or in the form of widely read reports, our work has achieved prominence — not just in the United States, but, increasingly, around the world.

We apply economics to issues arising in litigation, regulation, public policy, and management. Whether it is a question of measuring pollution damage, evaluating the rate of return on a large scale investment project, or advising a government about a particular regulatory reform, the stakes are high and the impact of the decisions widespread. Our growth to about 300 employees in nine offices in the U.S. and Europe reflects both the widespread acceptance of applied economics and the respect NERA has earned as a source of counsel. Four characteristics set NERA apart:

Specialization

We focus sharply on economics and closely related disciplines.

Defensibility

Because a high proportion of our work appears in trials, hearings and policy forums where it is subjected to close scrutiny, we adhere to exacting standards of defensibility.

Independence

Clients return to us over the course of many years on the assurance that they will hear what we believe is right, whether or not it is what they hope to hear.

Clarity

We use plain language, not jargon, even when a subject is complex.



Citizens for a
Sound Economy
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1250 H Street, N.W.
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Tel: 202-783-3870
Fax: 202-783-3858

September 19, 1995

Robert Coakley
Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515-6315

Dear Mr. Coakley:

In response to Chairman Myers' request for comments on the impact of flow control mandates, I am forwarding, for the record, a recent study released by Citizens for a Sound Economy Foundation that examines the benefits of competition in solid waste management. The study's author, Angela Logomasini, offers a careful examination of the adverse impacts of flow control requirements on small businesses and consumers. I hope you find the report useful. Should you need any further information, or should you need to contact me, please call at 202-783-3870. Thank you in advance for your consideration in this matter.

Sincerely,

Wayne T. Brough
Director of Research

Citizens for a
Sound Economy
Foundation
1250 H Street, NW
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(202) 763-3070

September 12, 1995

Going Against the Flow: The Case for Competition in Solid Waste Management

By Angela Logomasini

Local governments' imposition of solid waste flow control--the practice of mandating that trash haulers dispose of waste at government-designated facilities--creates monopoly providers of waste disposal services within a community. But such economic protectionism in the waste management industry has imposed huge costs on consumers, taxpayers, and the economy in general, while reducing innovation and subsidizing inefficient enterprises. Nonetheless, Congress is considering legislation that would bolster such laws. A better policy would be to curb their usage to promote a competitive system that allows the industry to seek the lowest cost options and operate efficiently.

When the founding fathers wrote the U.S. Constitution, they included the Commerce Clause, which provides that state governments may not impede interstate commerce--unless Congress grants states that right. The framers included this "free trade" provision because they knew that such freedom leads to prosperity. History has proven this principle correct: free-market societies enable their citizens to engage in free exchange, and they have flourished as a result.

However, Congress is currently considering options for state regulation of waste management markets. Specifically, Congress is examining the possibility of allowing states to impose flow control laws, which mandate that waste collectors only deliver wastes to government-designated disposal facilities. As noted by William L. Kovacs and Martha Pellegrini in a *Resource Recovery Report*--commissioned study, the flow control debate revolves around whether we want a nation that supports government control and limited exchange or a society that supports free markets:

Angela Logomasini is an adjunct analyst with Citizens for a Sound Economy Foundation

"The flow control issue is the embodiment of the classic struggle between proponents of free competition and those who believe government can solve all problems. It places those who believe in the sacredness of private property and the establishment of value by the marketplace against those who believe that government should pick winners and losers and ensure the outcome by subsidizing the winners; thereby ensuring the others will lose."¹

With Congress's electoral mandate to turn back the tide of intrusive government, the fact that a bill to expand flow control authority has passed in the Senate (S. 534) and is being considered in the House is perplexing. To members that understand the importance of their mandate, the flow control issue should be very simple. Flow control is an anticompetitive tool for use by those who believe in big government solutions. And, like other big government devices, it has a history of hindering free markets for the sake of little, if any benefit, while imposing huge costs on consumers, taxpayers, and the economy in general.

Flow control is an anticompetitive tool for use by those who believe in big government solutions. And, like other big government devices, it has a history of hindering free markets for the sake of little, if any benefit, while imposing huge costs on consumers, taxpayers, and the economy in general.

BACKGROUND

What Exactly Is Flow Control? The term "flow control" describes local government requirements that trash haulers—public and private—deliver the wastes they collect to a specific disposal facility for incineration, landfilling, recycling, or composting. Haulers must pay these facilities "tipping fees," a per-ton charge for the waste the facility receives. According to the U.S. Environmental Protection Agency (EPA), local governments in 35 states, the District of Columbia, and the Virgin Islands have employed flow control laws; and four states use flow control indirectly, through mechanisms such as "waste management plans." In eleven states, public officials do not use flow control at all.² Many times, local governments impose flow control ordinances in order to send waste to government-owned incinerators or landfills, ensuring that the local government collects the tipping fees that such facilities charge for taking the wastes. Governments

¹William L. Kovacs, Esq. and Martha E. Pellegrini, Esq., *Flow Control: The Continuing Conflict Between Free Competition and Monopoly Public Service*, Resource Recovery Report, 1993, p. 3.

²U.S. Environmental Protection Agency, *Report to Congress: Flow Control and Municipal Solid Waste, Office of Solid Waste, Municipal and Industrial Solid Waste Division*, EPA 530-R-95-008, March 1995, p. II-1.

also use flow control laws to ensure they can pay off bonds they have issued to pay for constructing waste disposal facilities.

Flow Control "Put or Pay"

Agreements. Local governments often use flow control laws to meet "flow control agreements," which are also referred to as "put-or-pay" agreements. Governments enter such agreements with private firms that either construct and own a waste facility or operate a government facility on contract. These agreements guarantee that the government will provide the plants with a certain percentage of the community's waste stream over a specific number of years—often as many as 30. When the government cannot deliver the agreed upon amount of waste, it must compensate the owner by paying the tipping fees that the facility would have collected had it received the agreed upon amount of waste.

Governments also use flow control laws to ensure they can pay off bonds they have issued to pay for constructing waste disposal facilities.

Flow Control's Evolution. Beginning in the 1970s, local governments turned to flow control requirements in response to a variety of state mandates and federal policies. At that time, the federal government began promoting state and local waste management plans under the Resource Conservation and Recovery Act (RCRA). In response, states developed statewide solid waste management plans that included mandates to localities on how to manage wastes. On top of these requirements, the federal government began pushing the development of waste-to-energy facilities, which became a popular item amidst the perceived energy crisis in the 1970s. Increasingly, local governments turned to flow control as a device to help manage the growing burden of state mandates as well as to ensure revenues at newly constructed waste-to-energy facilities.

As flow control laws became ever more intrusive, haulers and others turned to the courts for relief from the mandates, an activity that continues today. One of the first such flow control cases resulted from a 1976 ordinance passed by the City of Akron (Ohio) that required all waste haulers to obtain licenses from the city. As a condition of licensure, Akron mandated that haulers take waste to a designated incinerator. The ordinance would not allow haulers to do business with lower cost facilities or transfer stations that sorted out the recyclables. Haulers challenged the ordinance on a number of grounds. They claimed that the ordinance: (1) violated the Sherman Act as an unreasonable restraint on trade; (2) violated the U.S. Constitution's Commerce Clause; and, (3) represented a taking of property without just compensation, in violation of the Constitution. However, the court upheld the Akron ordinance as a necessary use of the

police power that states have to protect public health and safety. The court also held that the ordinance only had a minimal effect on interstate commerce.³

Since the Akron case, haulers and others have continued litigation on flow control, focusing on arguments that flow control impedes interstate commerce, violating the Commerce Clause. Finally in 1993, the U.S. Supreme Court found that flow control ordinances were unconstitutional, on the basis that they regulated and discriminated against interstate commerce. The case, *C & A Carbone, Inc. v. the Town of Clarkstown*, has brought the flow control issue to a head in Congress as many state and local officials seek to regain their flow control authority.⁴

FLOW CONTROL'S HIGH COSTS

Throughout this year, Congress has been considering legislation to require agencies to balance the costs and benefits of regulations they write. In so doing, Congress must not forget to consider the costs and benefits of the laws that it passes. Flow control is no exception. While its costs are many, the benefits are few.

Much of the evidence as to flow control's costs and benefits come from a recent call for public comments by the EPA. The overwhelming majority of private firms that answered this call for comments opposed flow control due to its many adverse impacts. In fact, 80 percent of disposal firms opposed flow control, and close to 90 percent of recycling firms opposed flow control (some recycling firms expressed opposition to flow control only for their industry).⁵ Among the specific problems identified:

Flow Control is Anticompetitive.

Flow control essentially allows governments to create monopoly providers of waste disposal services. Such economic protectionism enables the government to charge whatever rate serves its needs—at the expense of taxpayers and consumers. In Connecticut,

"Flow control is about power. Those who impose flow control are powerful By the careless stroke of a pen, they can put companies out of business or make them millionaires. This country was founded on the principles of free trade and open competition. Flow control is the direct opposite of these principles." —Scott R. Wagner, Statement to the EPA.

³For a more detailed discussion of this case and other flow control cases see: William L. Kovacs, Esq. and Martha E. Pellegrini, Esq., *Flow Control: The Continuing Conflict Between Free Competition and Monopoly Public Service*, Resource Recovery Report, 1993.

⁴*C & A Carbone, Inc. v. the Town of Clarkstown*, 114 S. Ct. 1677 (1994).

⁵U.S. Environmental Protection Agency, *Report to Congress: Flow Control and Municipal Solid Waste, Office of Solid Waste, Municipal and Industrial Solid Waste Division*, EPA 530-R-95-008, March 1995, Appendix I-A, Table 1.

for example, flow control means that haulers (and therefore consumers and taxpayers) near the border of Massachusetts have been unable to benefit from lower market rates in that state.

One hauler notes that higher tipping fees are just part of the problem. He states: "Before flow control, I had business in four towns, each of which had its own free municipal landfill. I collected roughly the same amount of waste in each town, so every fourth week I would alternate which landfill would get the town's waste. I did this all with one truck in seven hours. After flow control was instituted, designations changed as did my route and my business. My seven hour day increased to eleven or twelve hours. I was forced to sell several routes because Paine's could not provide our customers with the same level of service as they were accustomed to and expected. When you add all these factors together, the CRRA [Connecticut Resource Recovery Authority] has created a monopolistic system that must ultimately fail. By comparison, if CRRA disposal facilities would join the private/competitive market of the real world, it [sic] could sustain itself and persevere."⁶

A number of haulers reported that tipping fees at flow-controlled facilities have been increasing rapidly—a fact that should not be surprising in a government monopoly. One hauler noted that over nine years disposal rates in Lancaster (Pennsylvania) County's flow-controlled system increased 767 percent, and in nearby York County, flow control-supported rates increased 974 percent over 10 years.⁷ Another hauler in Southington, Connecticut noted that since its opening, the Bristol, Connecticut incinerator had increased its prices 10 percent a year while it received flow-controlled wastes. The town supported the incinerator because public officials thought it would provide the community with a stable source of inexpensive disposal for many years. However, while the Bristol incinerator was costing Connecticut residents \$55 a ton for disposal, market rates in nearby Massachusetts ranged between \$20 and \$40 a ton.⁸

Flow control's government monopolies do not only hold haulers hostage to higher prices. They make it difficult, if not impossible, for disposal companies to succeed. Many of these companies could offer lower disposal prices to attract business in a free market, but if the government prohibits their customers from going to such facilities, how can they survive?

⁶Michael R. Paine, *Testimony on Paine's Incorporated Opposition to Flow Control*, August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00010.

⁷Scott R. Wagner, *Statement to the U.S. Environmental Protection Agency* (York Waste Disposal Inc.), August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00022.

⁸Michael A. Zommer, *Comments to the EPA on Flow Control by Waste Material Trucking Co., Inc.*, August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00009.

As government increases costs, the protected monopoly edges out many small haulers. As one company notes in testimony to the EPA: "My testimony against flow control is based on the fact that my fixed disposal costs are so high that I cannot keep pace with the competition, placing my business in jeopardy. Public sector disposal policies undermine my ability to compete fairly and profitably in the private sector."⁹

Flow control hurts consumers.

Like so many government-created monopolies, the cost of flow control is passed along to consumers. According to a study conducted by National Economic Research Associates (NERA), flow control raises disposal costs, on average, by \$14 per ton, or 40 percent.¹⁰ The New York State Public Interest Group (NYPIRG) found that at least 22 of New York State's counties have flow control laws that cost residents in these communities 54 percent more than the costs to citizens that reside in counties that allow an open market.¹¹ This gives haulers little option but to raise their customers' prices accordingly.

A study by National Economic Research Associates found that flow control raises disposal costs by 40 percent, on average.

The NERA study and the NYPIRG study simply confirm what haulers explained to the EPA. In an open market, haulers often negotiate with disposal facilities to obtain a special price for their customers based on the level of business they conduct with a facility. When the price gets too high at their usual facility, they search for alternatives. Flow control bars them from doing so. One hauler noted in 1993 the cost increases due to flow control: "This year, York Waste Disposal will pay, on behalf of its customers, over \$11 million dollars in disposal. I know if we were able to negotiate disposal prices directly with disposal facilities, we could cut that disposal bill in half! ... In the long run, who suffers?—you and I, the consumer!"¹² Another hauler lamented: "The disposal cost alone, which the government now controls, makes it impossible for me to offer reasonable prices any longer."¹³

⁹Michael A. Zommer, *Comments to the EPA on Flow Control by Waste Material Trucking Co., Inc.*, August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00009.

¹⁰National Economic Research Associates, *The Costs of Flow Control*, May 3, 1995.

¹¹Prepared by Flow Limits Open-Market-Pricing of Waste—Citizens Offering Solutions to Spending, "Flow Control and the Costs to New York State Taxpayers," 1993.

¹²Scott R. Wagner, *Statement to the U.S. Environmental Protection Agency* (York Waste Disposal Inc.), August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00022.

¹³Michael A. Zommer, *Comments to the EPA on flow control by Waste Material Trucking Co., Inc.*, August 13, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00009.

Flow Control's Costs to Consumers

Community	Flow Control Price	Market price
Rhode Island (1991)	\$59.00	\$37.00 ¹
Bristol, CT	\$55.00	\$20.00 to \$40.00 ²
York Co., PA	\$59.25	\$30.00 ³
Mercer Co, NJ	\$117.81	\$55.00 ⁴
New Britain, CT	\$71.00	\$55.00 ⁵
A New Jersey Community	\$100.00	\$45.00 ⁶
A Minnesota Community	\$57.00	\$89.20 ⁷
N. Dakota Community	\$30.00	\$15.00-18.00 ⁸
Roanoke, VA.	\$60.00	"less than half" ⁹
A Long Island, NY Community	\$104.00	\$70.00 ¹⁰
Praire Land, MN	\$70.00	\$30.00 ¹¹
Clarkstown, NY	\$81.00	\$70.00 ¹²
Mecklenburg County, NC	\$37.50	\$29.00 ¹³
Hunterdon County, N.J.	\$100.00	"approximately half" ¹⁴

NOTES ON TABLE:

- This table illustrates a snapshot of just a few of the many cases where flow control raises costs for consumers.
- Table I cites the source of each examples (except where case name is included) since prices may change over time; see page 18.
- The price figures in Table I represent per ton tipping fees at disposal facilities. This table does not include flow control's added costs due to extra miles traveled, etc.

Many consumers would also be surprised to learn that sometimes governments use flow control to charge higher rates for haulers within their community, while charging a competitive market rate to others in an effort to attract revenues from outside the local government jurisdiction. For example, in York County (Pennsylvania), while rates were \$59.25 a ton for in-county generated wastes, the York County incinerator would receive out-of-county wastes (spot market wastes) for \$30 a ton.¹⁴

Sometimes governments use the differential between their monopoly prices and market prices to their own advantage—simply pocketing the difference. For example, a New Jersey hauler describes a situation in his state where the county requires all haulers to drop wastes at the government's transfer station at a cost of \$117.81 for regular trash and \$136.36 for construction debris. The government then takes that trash to a private landfill that competes in another jurisdiction. At that landfill, the hauler notes, he is charged only \$55 a ton for either regular trash or construction debris. That means consumers in the flow-controlled community are paying an extra \$62 per ton for regular trash and \$81 per ton for construction debris because the hauler has to bring trash from that community to the government transfer station rather than directly to the landfill.

Flow Control is Inefficient. When government officials outlaw the competition that free markets generate and replace it with a regulated monopoly, the efficiencies generated by competition are lost. As noted, flow control requires communities to dispose of waste at more expensive facilities—facilities that, in part, cost more because they are poorly managed and often poorly designed in the first place. Indeed, many times government relies on flow control because they invest hundreds of millions of dollars to build enormous facilities that cost huge sums of money to operate—more than is prudent. The only way to recoup the costs for these poor investment decisions is flow control.

"The loss of price competition has significant effects in the planning as well as the operation of a facility. Flow control reduces part of the economic discipline under which a locality evaluates a potential project."

"Flow control essentially requires this member to use two different trucks and crews to collect MSW on two sides of the same street. It has forced this hauler to design routes that are uneconomical...."

In addition to encouraging inefficient investments, flow control also forces private industry to engage in inefficient practices. For example, because flow control laws in one jurisdiction can direct waste to one facility while neighboring communities direct waste elsewhere, haulers sometimes must

¹⁴Scott R. Wagner, *Statement to the U.S. Environmental Protection Agency* (York Waste Disposal Inc.), August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00022.

engage in senseless collection practices to comply with all the laws. The National Solid Wastes Management Association (NSWMA, now the Environmental Industries Association) reports on how it affects one member of the association: "Flow control essentially requires this member to use two different trucks and crews to collect MSW [Municipal Solid Waste] on two sides of the same street. It has forced this hauler to design routes that are uneconomical because of their under-utilization of equipment, e.g., he frequently stores half-filled collection trucks in his lot overnight."¹⁵

Flow Control Discourages Innovation. The more competitors a market has, the more opportunity for new inventions. Flow control reduces the possibility for innovation by limiting entrants into the market. After all, why try to compete in a market when the government guarantees another participant most, if not all, of the business? In fact, the mere threat that government might pass a flow control law can sometimes be enough to deter anyone from making a significant investment.

In some cases, governments use flow control specifically to keep out innovative competitors. In Loudon County, Virginia, for example, the county government spent years litigating with a local farmer who simply wanted to take the area's organic wastes (shrubbery and other yard-type wastes) to compost on his farm. The wastes created a rich fertilizer, which eliminated the need for chemical fertilizers. The farmer could take the wastes for \$10 a ton from area developers, but the town insisted they bring it to the landfill at \$55 per ton.¹⁶

By limiting such innovation, regulators reduce disposal options and disposal capacity. Ironically, many people contend that flow control is necessary to ensure disposal capacity, when in reality, it more likely has the opposite effect. As Nolan A. Perin, owner of a family-run hauling, disposal, and recycling business in Pennsylvania, noted in testimony to the EPA: "We are here because of the previous governmental intrusion into the marketplace which has caused a disposal-capacity shortfall and an inequitable enforcement situation to perpetuate itself in the field of solid waste disposal. New Jersey, which is perceived to be one of the worst violators in terms of sending its wastes to distant places found itself facing an extreme disposal capacity shortfall because of flow control and economic strangulation of industry."¹⁷

¹⁵Comments of the National Solid Wastes Management Association Before the U.S. Environmental Protection Agency, *Municipal Solid Waste Flow Control*, August 17, 1993 EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00038.

¹⁶See Angela Logomasini, "Municipal Solid Waste Mismanagement: Government Failures and Private Alternatives," *Journal of Regulation and Social Costs*, Vol. 3., No. 1, June 1993.

¹⁷Nolan A. Perin, letter to the Environmental Protection Agency commenting on flow control, August 13, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF.

In Rhode Island, the state's flow control law mandated that a hauler dump waste in a his state's Central Landfill, which had been declared a Superfund site.

haulers to dispose of wastes in ways that could pose greater environmental hazards. For example, in Rhode Island, Mr. Thomas McCaughey of McCaughey Standard Inc. Solid Waste Disposal and Recycling Systems and Services reported that the state's flow control law mandated that he dump waste in his state's Central Landfill, *which had been declared a Superfund site*, while bypassing a convenient, less expensive waste-to-energy plant in Massachusetts.¹⁸

Similarly, Scott Wagner of York Waste Disposal Inc. complained that the local government forced him to do business with a waste transfer station that had received \$9,500 in environmental fines from the Pennsylvania Department of the Environmental Resources between 1986 and 1991. Mr. Wagner noted: "Our company has never used this site because of potential liability, we requested permission from the County to take this waste directly to the landfill, but were flatly denied."¹⁹

Flow Control Can Mandate Disposal at Less Sound Facilities. One might think that flow control would at least direct wastes to the most environmentally sound alternatives. Unfortunately, flow control laws have actually been used to force

... the local government forced him to do business with a waste transfer station that had received \$9,500 in environmental fines from the Pennsylvania Department of the Environmental Resources.

Flow Control Hurts Recycling Effects. Flow control also represents a significant impediment to recycling, as it keeps firms from accessing the post-consumer materials they need. In comments to the EPA, Peter Bunsen, manager of the Paper Recycling Committee of the American Forest & Paper Association explained how flow control inhibits paper recycling: "To continue unprecedented expansion, the paper industry needs unfettered access to the marketplace for necessary volume, quality and diversity of this raw material [paper and paper board used as raw material]. As with other commodities, the economics of supply and demand are crucial factors, and government

¹⁸Thomas V. McCaughey, McCaughey Standard, Inc., Solid Waste Disposal Recycling Systems and Services, Letter to EPA regarding request for public comments on flow control, August 11, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00023.

¹⁹Scott R. Wagner, *Statement to the U.S. Environmental Protection Agency* (York Waste Disposal Inc.), August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00022.

flow control policies which prohibit or restrict our ability to obtain the right amount and type of raw material jeopardized past and future investments in paper recycling."²⁰

Flow Control Leads to More Air Pollution and Increased Fuel Usage. It is not uncommon for flow control laws to make haulers travel distances that are far greater than they would have traveled were they allowed to choose a closer facility. One hauler—forced to travel an additional 30 miles per trip to a disposal facility to meet a flow control law—described what this meant in environmental terms: "an additional 70 miles times 8 trucks x 52 weeks a year for twenty-nine thousand one hundred and twenty-two miles wasted. More diesel fuel used, more air pollution, more wear and tear on our trucks and on the public highways."²¹

Flow Control Hurts Small Businesses. Flow control is particularly hard on small businesses. In an already tough market, small waste disposal companies can be squeezed out by flow control. One such hauler notes in response to the ever increasing tipping fees at the flow-controlled facility:

In an already tough market, small waste disposal companies can be squeezed out by flow control.

"Some people claim flow control protects small businesses because it levels the playing field. We compete against at least seven other hauling companies in Southington. We lose one customer a day, tempted away by lower prices. We offer discount programs we can ill afford. Tip fees continue to increase, but we do not dare to increase our price at the curb to cover them. If flow control truly protects us, than how can a national hauling company currently offer curbside prices in Southington that are 50 percent less than the established market rates?"²²

Administrative Efficiency: A Benefit? Meanwhile, government officials account for the main base of support for flow control. Almost all of the public officials that responded to EPA's call for public comment expressed support for flow control, which is not surprising since such laws make their job easier. In fact, that was the main, if not only, benefit that EPA cited of flow control: the ability for local governments to effectively administer their solid waste management plans. However, is this administrative efficiency worth the cost? The experience with flow control indicates the

²⁰Peter Bunsen, Testimony of American Forest & Paper Association on Municipal Solid Waste Flow Control, August 17, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00028

²¹Scott R. Wagner, *Statement to the U.S. Environmental Protection Agency* (York Waste Disposal Inc.), August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00022.

²²Michael A. Zommer, *Comments to the EPA on flow control by Waste Material Trucking Co., Inc.*, August 13, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00009.

answer is no. Flow control has raised costs for consumers, impeded economic efficiency in the marketplace, and discouraged innovation.

Summary of Flow Control's Costs v. Benefits

Costs	Benefits
✓ Increases prices for consumers	✓ Facilitates administrative efficiency
✓ Imposes hidden taxes	
✓ Creates more air pollution	
✓ Leads to higher fuel usage	
✓ Is anticompetitive monopolistic/economic protectionist	
✓ Reduces innovation	
✓ Hinders productive recycling efforts	
✓ Supports government's ability to spend tax dollars to make poor investments	
✓ Promotes inefficiency	
✓ Creates incentives for illegal dumping	
✓ Contributes to disposal capacity shortfalls in some areas.	
✓ Hurts small businesses	

FALLACIES ABOUT FLOW CONTROL

Flow control's supporters have developed a number of arguments as to why consumers should shoulder the costs of these laws. However, based on the history of flow control's implementation these arguments do not pass muster. Here are some of the main fallacies of flow control.

- Fallacy:* *Flow control is necessary to ensure waste is disposed of in an environmentally sound manner.*
- Fact:* *Flow control has little to do with environmental health and safety. Facilities that compete for wastes meet the same standards as facilities that obtain wastes via flow control.*

The EPA concluded in its study of flow control:

"Protection of human health and the environment is directly related to the implementation and enforcement of federal, state, and local environmental regulations. Regardless of whether state or local governments administer flow control programs, States are required to implement and enforce federally-approved regulations and fully protect human health and the environment. Accordingly, there are not empirical data showing that flow controls provides more or less protection."²³

If all facilities must meet the same environmental standards, no reason exists to deny some facilities the right to compete. As noted above, flow control is actually counterproductive to environmental goals. It encourages waste of resources; increases air pollution by demanding that haulers travel greater distances; and sometimes even mandates that haulers do business with firms or government entities that violate environmental laws.

Fallacy: Flow control is necessary to ensure that communities will have enough disposal capacity.

Fact: Disposal companies continue to invest in waste disposal facilities without flow control assurances, which is why states that do not employ flow control still have plenty of disposal capacity.

There is little reason to fear that in the absence of flow control states will not have the capacity to manage wastes. The eleven states that do not have flow control manage to site facilities. And the states with numerous flow control laws do not necessarily do much better. In fact, New Jersey and New York, states that rely on flow control ordinances, are among the highest exporters of solid waste.

In its study, the EPA reviewed the various waste disposal alternatives to determine which, if any, were dependent on flow control. Landfills are the main disposal method across the country. The EPA found "no evidence that flow controls have played a significant role in financing landfills or landfill expansions....Private landfill firms have demonstrated their ability to raise substantial capital from publicly-issued equity offerings, indicating that investors are willing to provide capital for the expansion of landfills without flow control guarantees, in response to a perceived market demand for this segment."²⁴ Moreover, the EPA notes, the nation has plenty of landfill capacity.

²³U.S. Environmental Protection Agency, *Report to Congress: Flow Control and Municipal Solid Waste*, Office of Solid Waste, Municipal and Industrial Solid Waste Division, EPA 530-R-95-008, March 1995, p. II-5.

²⁴*Ibid.* at p. ES-10.

While the United States has fewer landfills today than in past decades, today's landfills still offer enough capacity because they are larger.

The EPA found that flow control does, in fact, help support waste-to-energy incinerators, supporting 58 percent of these facilities' throughput. However, the fact that these plants benefit does not mean capacity would disappear if they were not supported by an anticompetitive flow control law. Much—42 percent—of the production of these facilities is obtained on a competitive basis. Therefore, many of the facilities that rely on flow control may survive in a competitive market. But even if some did not, the waste would simply go to support other facilities—making it easier for them to survive.

Far from reducing capacity, an open market would likely increase it. As noted earlier, flow control hinders creation of capacity by keeping firms out of the market because they cannot compete when the government has designated much, if not all, of the waste disposal business to a specific facility. Free markets, offering the opportunity to compete—not government-created monopolies—create capacity.

Fallacy: *Flow control is necessary to enable governments to obtain bonds needed to build waste facilities. Without such flow control assurances, no one will underwrite the costs of the facilities necessary to manage trash.*

Fact: *Competitive waste management industries are prepared to, and are in fact, investing in disposal facilities in the absence of flow control. Flow control simply gives governments the opportunity to make bad investment decisions at the taxpayers' expense.*

Underwriters of bonds used to build waste management facilities make this argument because flow control gives them a relatively risk free investment—at the expense of consumers who then must pay for higher waste disposal. With flow control assurances, underwriters are willing to issue bonds for facilities that could prove wasteful and incapable of competing in an open marketplace. But in a free market, underwriters will only back enterprises that they deem will prove efficient enough to withstand the competition. If underwriters do not want to support construction of a facility, that's a good thing. It protects taxpayers and consumers from subsidizing what would be a poor investment decision by the local government.

As one trash hauler noted to the EPA: "...it currently costs between \$500,000 and \$1 million PER ACRE to build a new landfill....Private companies that invest in building these facilities have NO opportunity to guarantee income through enacting flow control."²⁵ Still, many companies are willing and able to get into this business. Little

²⁵Scott R. Wagner, *Statement to the U.S. Environmental Protection Agency* (York Waste Disposal Inc.), August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00022.

reason exists to grant risk-free investments to underwriters when others are willing to invest in disposal facilities without such economic protectionism.

In fact, one industry analyst notes in *Standard & Poor's Credit Week Municipal* that flow control is not the only way to secure financing: "While important, legal waste flow control is not a requirement for receiving a [Standard & Poor's Bond] rating. It is not necessarily even a requirement for receiving a high bond rating. If a system can provide solid waste disposal at a cost level below the surrounding market, the incentive for a hauler to avoid the system is eliminated. The more competitive the rate, the higher the rating the system's debt is likely to enjoy."²⁶

Fallacy: *Flow control laws are necessary to foster government recycling efforts.*

Fact: *Flow control does not support much recycling—rather, it tends to hinder economically sound recycling.*

As the EPA points out, flow control laws mostly serve waste-to-energy incinerators. EPA notes 58 percent of waste-to-energy incinerators' production depends on flow control, while only 3 percent of the recycling market depends on flow control.²⁷ In addition, while communities increasingly rely on composting, EPA could not find any flow control laws used to support that activity.

Where flow controls do facilitate some recycling the impact is marginal: it affects only 19 percent of one type of recycling activity—MRFs [Municipal Recovery Facilities, which are plants that sort wastes for recycling]. Moreover, flow control only helps the recycling operations that cannot survive on their own. Such operations would fail in the open market because they use more resources than they save, which is why they cost so much more. While flow control protects such inefficient operations, it disadvantages the ones that would succeed by saving resources and money.

Rather than help, flow control does more to hinder recycling. As noted, recycling firms tend to overwhelmingly oppose flow control because such laws often make it impossible for them to access recyclables. Often local ordinances direct the materials to incinerators owned or contracted by government.

²⁶Ryan, Mark, "Courts Complicate Solid Waste Financing," *Standard & Poor's Creditweek Municipal*, Nov. 9, 1992, at. 69, 70 as cited in *Comments of Recycling Products of Rockland, Inc. and C & A Carbone, Inc. on Municipal Solid Waste Flow Control*, EPA RCRA Docket #F-93-RFCN-FFFF, Document #00021.

²⁷U.S. Environmental Protection Agency, Office of Solid Waste, Municipal Solid Waste Division, *Report to Congress: Flow Control and Municipal Solid Waste*, EPA 530-R-95-008, March 1995, p. ES-10.

In a larger sense, whether waste is disposed of via recycling or incineration is beside the point. Flow control simply means directing waste to one facility, at the expense of its competition—even when the competition can dispose of the waste in an *environmentally sound manner*, while using *fewer resources and charging lower prices*. A free market directs waste to the most efficient disposal option, which in some cases may mean disposing waste in an efficient, competitive incinerator, while other times it means recycling. Flow control means directing waste to the facility that serves local government revenues and controls—regardless of whether better, more efficient options exist.

Fallacy: *Flow control is necessary because it makes the most sense to each community to manage all its own waste.*

Fact: *Flow control does indeed foster a community's ability to manage its own waste. But expecting a community to manage all of its own wastes is like expecting a community to grow all its own trees for home building or grow all its own food. Not only are such arrangements unnecessary, they do not make good sense.*

The founding fathers wanted free trade between the states and within the states because it allows the entire nation to benefit from the diverse resources unique to each. Free trade makes it possible to supply the entire nation with corn grown in the Midwest and oranges grown in warm coastal states like Florida and California. Each area uses its unique resources, but all benefit.

The same goes for waste management. If one community builds a large, regional landfill or other waste management facility, should it not be allowed to compete? Market forces in recent years have led to the development of large regional landfills located in more rural areas rather than many smaller landfills located within communities. By allowing for free market competition, various communities can offer the resources they have available.

CONGRESSIONAL PROPOSALS

Rather than look for ways to expand local government authority to impose onerous flow control laws, the goal of any flow control law considered in Congress should be the elimination of these anticompetitive and counterproductive laws—not an extension of them.

Some suggest that any flow control law that passes in Congress should necessarily grandfather the facilities currently under contract—even when that impedes interstate commerce. They say the costs of allowing these facilities to fail would be too great to the taxpayers in the communities that have financed them. But what about the costs these facilities are already imposing on these communities, day in and day out? At issue

is whether continuing to impose the costs of flow control for up to 30 more years is worth saving facilities for fear that some might not be able to compete. Extending flow control means prolonging bad investments that are already costing taxpayers money. It means forcing haulers to continue engaging in absurd practices to comply with different flow control laws in neighboring communities.

Congress should not include any provision allowing the creation of any new flow control laws. Some proposals have included provisions that would allow flow control in "limited" cases where "no other alternatives" exist within a community. But the idea that "no other alternatives" could exist is simply incorrect. Ironically, that is the excuse public officials currently use for flow control laws now in place. With such a provision, public officials will continue to use that excuse.

In sum, the following principles should guide the flow control debate:

- **Maintain the Supreme Court rulings upholding constitutional restrictions on impediments to interstate commerce in the solid waste industry.** These rulings are already the law of the land, they support a sound principle. There is little justification for taking a step backward to protect facilities from competition in other states.
- **Do not legislate to protect this anticompetitive practice.** Flow control is an expensive, inefficient, and environmentally counterproductive policy. Its eventual elimination should be the goal of any flow control policy.

CONCLUSION

As Congress debates flow control, members should remember what this debate is really about: Do they want to lead the nation towards policies that seek government solutions or do they want to keep true to their mandate to reduce the burden of government? They should also remember the results of anticompetitive policies like flow control—higher costs for consumers and taxpayers, and unnecessary burdens on small "mom and pop"-type entrepreneurs. The only ones who benefit from flow control seem to be local government officials, who gain an administrative tool that enables them to make irresponsible investments at taxpayer expense.

CITATIONS TO TABLE I

1. McCaughey, Thomas V., McCaughey Standard, Inc., Solid Waste Disposal Recycling Systems and Services, Letter to EPA in request for public comments on flow control, August 11, 1993, RCRA Docket No. F-93-RFCN-FFFFF.
2. Michael Zommer, *Comments to the EPA on Flow Control by Waste Material Trucking Co., Inc.*, August 13, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #0009.
3. Scott R. Wagner, *Statement to the U.S. Environmental Protection Agency* (York Waste Disposal Inc.), August 19, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00022.
4. No affiliation provided, *Testimony: The Case Against Flow Control*, August 17, 1993, EPA RCRA Docket #F-93-RFCN-FFFFF, Document #00005.
5. *Comments of the National Solid Wastes Management Association Before the U.S. Environmental Protection Agency*, RCRA Docket No. F-93-RFCN-FFFFF, August 17, 1993.
6. *Ibid.*
7. *Ibid.*
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*
11. *Waste Systems Corp. v. County of Martin*, No. 92-1642 (8th Cir. Feb. 18, 1993).
12. *C & A Carbone, Inc. v. the Town of Clarkstown*, 114 S. Ct. 1677 (1994).
13. *Comments of the National Wastes Management Association before the U.S. Environmental Protection Agency*, RCRA Docket No. F-93-RFCN-FFFFF, August 17, 1993, p. 6.
14. *J. Filiberto Sanitation, Inc. v. New Jersey Dept. of Env'tl Protection*, 857 F2d. 913 (3d Cir. 1988), at 916.

LOCAL GOVERNMENT COALITION FOR ENVIRONMENTALLY SOUND MUNICIPAL SOLID WASTE MANAGEMENT

*Atlantic County Utilities
Authority (New Jersey)*

*Bristol Resource Recovery
Facility Operating Committee
(Connecticut)*

*Connecticut Resources
Recovery Authority*

*Delaware County Solid Waste
Authority (Pennsylvania)*

*Greater Detroit Resource
Recovery Authority*

*Housatonic Resources Recovery
Authority (Connecticut)*

*Indianapolis-Marion
County, Indiana*

Marion County, Oregon

*Minnesota Resource
Recovery Association*

Montgomery County, Ohio

*New Jersey Association of
Environmental Authorities*

*Ohio Prosecuting Attorneys
Association*

*Penobscot Valley Refuse
Disposal District (Maine)*

*Resource Authority in
Sumner County, Tennessee*

*Solid Waste Authority of
Central Ohio*

*Solid Waste Disposal
Authority of the City of
Huntsville, Alabama*

*Spokane Regional Solid
Waste System (Washington)*

*York County Solid Waste
and Refuse Authority
(Pennsylvania)*

October 4, 1995

The Honorable Jan Myers
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Myers:

This letter is submitted by the Local Government Coalition for Environmentally Sound Municipal Solid Waste Management (Coalition) for inclusion in the record of the Small Business Committee's September 13, 1995 hearings regarding municipal solid waste flow control. We have been advised by Committee counsel that the hearing record remains open at this time for receipt of such material. As a preliminary matter, we should note that the Coalition is an ad hoc consortium of cities, counties, solid waste management authorities and related associations concerned with municipal solid waste (MSW) flow control legislation and other critical MSW management issues. The Coalition's members are dedicated to integrated municipal solid waste management that provides full protection for public health and the environment, and reliable, long-term municipal waste management solutions for their respective communities.

This letter will initially address the trend toward increasing corporate concentration in the waste management industry, and how flow control can counteract that trend. We then provide important information regarding the impact of flow control on solid waste management services and pricing; this information reveals fundamental flaws in statements made by various witnesses at the recent hearing.

Concentration in the waste management industry

A topic that was raised several times during the Committee's recent hearing on flow control was concentration and vertical integration in the solid waste management industry. This concern is well documented. As noted in a recent editorial in a national trade publication, the largest waste companies are in "a buying feast for a host of companies these days," and the

"[b]igger fish are eating smaller fish at a dizzying pace." Allan Gerlat, Buying Craze Just Goes On, Waste News, September 18, 1995, p. 8. That editorial comment is well-supported by the facts. For example, a recent annual report of one of the largest companies in the industry noted as follows:

We have re-energized our acquisition program this past year. Annualized revenues from acquisitions closed during fiscal 1993 exceeded \$182 million--over three times what we did in 1992. The number of companies acquired more than doubled to 110.

Our goal for 1994 is to add another \$250 to \$300 million in annualized revenues through acquisitions.

Annual Report to Stockholders, Browning-Ferris Industries, Inc., January 14, 1994, p. 3. That company's current annual report repeats the same theme:

Our efforts in the acquisition area continued unabated in 1994. This is an excellent time for us to be in the market for strategic acquisitions. This year we added 115 new companies to BFI, representing an additional \$244 million in annualized revenue, just short of our goal of \$250 million.

Annual Report to Stockholders, Browning-Ferris Industries, Inc., January 11, 1995, p. 3. As these annual reports indicate, in just a brief two-year period, this one company alone has acquired 225 smaller waste companies. This increasing concentration, moreover, continues at a strong pace in 1995. See The Waste Age 100, Waste Age, September 1995, p. 42. As recently explained by a senior officer of a large waste company:

Consolidation in the industry was bound to come. Waste Management and BFI have had roughly 1,000 acquisitions since 1990***. Consolidation is going to affect competition because it's been going too much on a one-way street. Certainly, this trend is going to make it very tough in the future for genuine competition to continue.

"Take it From the Top: An Interview with John Rangos," World Wastes, January 1995, p. 68.

This trend has important implications for small waste collection and hauling businesses and their ability to survive without flow control. More specifically, the trend in waste

disposal facilities is one that is increasingly capital intensive and at the same time subject to significant economies of scale. An example of this is the increasing role of regional landfills and the growing concentration of landfill capacity in a small number of companies. See U.S. Environmental Protection Agency, *Report to Congress on Flow Control and Municipal Solid Waste*, EPA 530-R-95-008 (March 1995, pp. III-65 to -71 and Appendix III-E) (cited below as "*Report to Congress on Flow Control*"). In contrast, the waste collection and hauling business is significantly less capital intensive, which means that small companies can enter this segment of the market and compete with larger companies. That is why various witnesses at the Committee's recent hearing noted that flow control creates a "level playing field" and allows small waste collection and hauling companies to compete in their specific market--waste collection and hauling--with considerably larger, vertically integrated companies. A very modestly-sized waste hauling company (six employees and four collection vehicles) explained this point in a recent letter to the members of the Small Business Committee:

[T]he use of flow control authority in the communities that we serve has allowed my company, and others similarly situated, to remain independent and survive despite the growing dominance of the largest companies in this business. That is because flow control allows me to compete based on the MSW collection service that my company provides very efficiently and for which economies of scale do not significantly disadvantage small companies. On the other hand, I am not in the waste disposal business, and I could not survive or remain independent if I had to compete based on the collection and disposal service pricing advantages of the very large, vertically-integrated companies that operate, among other things, their own regional landfills -- "megafills".

See Letter of Richard Podwell to Representative Jan Myers, September 14, 1995 (emphasis added).

In short, small businesses benefit from flow control authority. And although one of the witnesses opposing flow control at the recent hearing said "if small companies can't compete with larger companies, so be it . . . I look at the bottom line," the Small Business Committee does care whether small businesses survive in the waste management industry. This is not simply a question of preserving competitors for their own sake. Rather, by preserving competitors, the opportunity for meaningful long-term competition is also preserved.

Flow control authority does not result in inferior service or higher prices. Several witnesses at the Small Business Committee's hearing on flow control (e.g., Messrs. Broadway and Clements) argued that flow control authority is synonymous with inferior service and higher prices. These claims are without basis, and the facts, contrary to the witnesses' assertions, are these: the user fees -- tipping fees -- charged for municipal solid waste management services in communities that rely on flow control are based on cost. Those fees typically recover the costs of various solid waste management service categories -- recycling, household hazardous waste collection, composting, public education, resource recovery (waste-to-energy) facilities, etc. Moreover, flow control proponents agree that such tipping fee-derived revenues should not be used to cross-subsidize non-solid waste management services. In fact, the flow control legislation that was overwhelmingly approved by the Senate this past May, S.534, expressly so provides with the full concurrence of flow control proponents.

Another witness (Mr. Felix) made the equally invalid assertion that for communities that rely on flow control authority "[c]ost was not a consideration" and "[t]he result ***has been the construction and operation of facilities that have a much higher cost per ton disposal fees [sic]." These unfounded statements disregard the fact that local governments must by law adhere to competitive bidding requirements that make cost a prime consideration. Moreover, the fact that some communities that rely on flow control authority may have higher tipping fees than certain non-flow control communities is fully justified. Such higher fees often result because the community has decided to invest in capital intensive waste management infrastructure, such as advanced technology materials recovery facilities or resource recovery/waste-to-energy facilities. This point is also an "apples and oranges" comparison. Specifically, the user fees paid in communities that rely on flow control will typically recover the communities' costs for numerous components of an integrated system of waste management facilities -- recycling, household hazardous waste collection, composting, resource recovery/waste-to-energy, etc. In sharp contrast, in a typical non-flow control jurisdiction the only cost that tipping fees would recover is the cost of disposal, which is only a small part of the picture. See Report to Congress on Flow Control, p. III-51 ("WTE [waste-to-energy] tipping fees supported by flow controls generally are higher than landfill tipping fees. Due to flow control, such WTE tipping fees need not be constrained by competition and often cover other municipal system costs (e.g., curbside recycling). In contrast, private regional landfills are more likely to set tipping fees at (lower)

levels that recover disposal costs only" [emphasis added]). 1/

In this connection, it should also be noted that witness Glover argued against including the cost of various solid waste management services, such as recycling, composting, or household hazardous waste collection, in the tipping fees charged for disposal of MSW because this "hides the true cost of managing solid waste". With all due respect, this statement seems to ignore a basic reality: all of us are quite willing to pay to have our trash taken away, that is, trash disposal will generate revenue. But many critical municipal solid waste management services (e.g., household hazardous waste collection, battery collection and educational programs) cannot produce any revenue and instead pose substantial expenses for the affected communities. That is because few among us will voluntarily participate in such programs and at the same time pay a user fee for the privilege of doing so. Flow control allows communities to generate the funds required to support these programs without having to rely on taxes. The previous Administration squarely supported this approach. See William K. Riley, Administrator, U.S. EPA, Statement Before the Subcomm. on Environmental Protection of the Senate Comm. on Environment and Public Works 13 (September 17, 1991) ("It is just common sense as well as good economic sense, that those responsible

1/ In making this point, witness Felix noted (at 2) that Mecklenburg County, North Carolina had projected that under flow control the County's tipping fees would be \$53 per ton, but that "[t]he rate is actually \$29 per ton today because flow control was never implemented and the free market alternatives were allowed to work." The witness failed to mention, however, that the difference between those two amounts relates to non-revenue producing services, such as recycling, composting, household hazardous waste collection, public education, etc.; and due to the absence of flow control authority, those costs are now being recovered through increased taxes in Mecklenburg County.

The experience of the St. Lawrence County, New York Solid Waste Disposal Authority is very similar. This agency had traditionally relied on flow control in connection with an integrated system of waste management facilities. The loss of flow control authority has meant a sharp decline in the revenue necessary to support those facilities. As a consequence, St. Lawrence County has terminated household hazardous waste collection programs, scaled back recycling and reduced public education programs aimed at encouraging increased recycling, waste reduction, etc.

for solid waste management costs pay the cost these activities impose on society"); see also U.S. EPA, *Variable Rates In Solid Waste: Handbook For Solid Waste Officials*, Volume I--Executive Summary 2, EPA 910/9-90-012a (June 1990) (discourages use of general taxes to fund solid waste management because no incentive to reduce waste volume is provided and encourages volume-based user fees).

Finally, several of the witnesses who oppose flow control referred to a study prepared for Browning-Ferris Industries by National Economic Research Associates (NERA) to support the claim that tipping fees are higher for communities that rely on flow control in comparison to non-flow control jurisdictions. The BFI-NERA document, however, is patently invalid. Although a detailed discussion would be beyond the scope of this letter, several points should be noted briefly. Most fundamentally, the BFI-NERA document is laden with extreme distortions, all of which go in one direction, that is, portraying flow control as more expensive. As just one example, the BFI-NERA document makes no attempt to compare tipping fees on a consistent basis; instead, spot market tipping fees are apparently averaged together with tipping fees under long-term contracts without distinguishing the two. The difference between long-term and spot market tipping fees, however, is extremely important when analyzing the impact of flow control. In fact, a principal reason why local governments rely on flow control is to facilitate long-term agreements for the development and financing of waste management facilities, as well as to avoid the short-term fluctuations -- which are at times considerable -- in spot market prices. In short, tipping fees for communities that rely on flow control are far more likely to be based on long-term contracts than is the case for communities that do not rely on flow control. Although the BFI-NERA document ignores this crucial distinction, some or all of the difference in average tipping fees in the BFI-NERA document is attributable to differences in contract length alone. 2/

The BFI-NERA document also ignores the fact that the tipping fee data that they present for non-flow control communities represent fees for disposal only, whereas tipping fees in communities that rely on flow control recover a number of additional costs, as explained above. The distortion underlying the BFI-NERA document is perhaps most poignantly demonstrated by the claim (at 18) that in Medina, Ohio flow control "prevents waste generators from saving approximately \$20 per ton." To make that claim the BFI-NERA document compares the cost of a modern recycling

2/ Further increasing this distortion, the BFI-NERA document uses data for only one calendar quarter, the first quarter of 1995, which is the quarter when spot market prices are lowest.

facility with the cost of burying waste at landfills in the region. Without belaboring what is utterly obvious, it costs more to recycle rather than bury waste, and that has nothing to do with flow control! 3/

Flow control does not increase the risk of Superfund liability. Several witnesses before the Committee suggested that flow control increases the risk of Superfund liability for waste haulers. Such statements are patently incorrect. It is well-settled that transporters are not liable under Superfund where they do not choose the disposal site, as would be the case where flow control is employed. This point is born out by legislative history, EPA policy and every judicial decision addressing the issue. See 130 Cong. Rec. S9177 (daily ed. July 25, 1984) (statements by Senators Chafee and Randolph explaining that transporters must select the disposal destination before Superfund liability can be imposed); Policy for Enforcement Actions against Transporters under CERCLA (Dec. 23, 1985) (EPA, OSWER Directive No. 9829.0) (transporter not to be sent notice letter nor be named in enforcement action until EPA determines that transporter selected

3/ Nor can flow control properly be characterized as a controversy between public vs. private ownership and operation of recycling/waste management facilities. The members of this Coalition are a case in point. The clear majority of the recycling/waste management facilities with respect to which our members exercise flow control authority are privately owned and operated. For example, the integrated waste management system that serves the City of Indianapolis consists of a waste-to-energy plant, an ash monofill, a composting facility, a materials recovery (recycling) facility, three transfer stations and a landfill. All of these facilities are privately owned and operated with the exception of the ash monofill, which is publicly owned and privately operated. National trends are fully consistent (e.g., Flow Control Report to Congress, p. III-58, states that "it is noteworthy that the private sector has an ownership or operational role for 84 percent of WTE [waste-to-energy] throughput, including most of the larger WTEs. * * * WTE throughput for these facilities averages nearly three times the amount of the throughput at facilities owned and operated exclusively by the public sector"), as are state and regional statistics (e.g., the Pennsylvania Waste Industries Association, which represents private companies engaged in the operation of landfills, transportation of solid waste, recycling and related services, estimates that its members provide 75 percent of all of the municipal waste processing and disposal services within Pennsylvania).

the treatment or disposal facility); United States v. Petersen Sand & Gravel, Inc., 806 F. Supp. 1346, 1356 (N.D. Ill. 1992) ("Under the unambiguous terms of Section 9607(a)(4) [of CERCLA] and well-settled case law, a person cannot be liable as a transporter unless that person actually selects the site"); Alcatel Information Systems, Inc. v. Arizona, 778 F. Supp. 1092, 1096 (D. Ariz. 1991) (same); United States v. Western Processing Co., 756 F. Supp. 1416, 1420 (W.D. Wash. 1991) (same); United States v. Hardage, 761 F. Supp. 1501, 1516-17 (W.D. Okla. 1990) (same).

More generally, some witnesses appeared to contend that flow-controlled facilities have less incentive to manage waste handling, treatment and disposal activities properly. This is simply not the case. Superfund makes the owner and operator of a facility where hazardous substances are released jointly and severally liable for cleanup of such releases with those who arranged for disposal, regardless of whether flow-controlled waste was disposed. Superfund and state solid and hazardous waste laws, which invariably impose strict and joint and several liability, give the owners and operators of facilities at which MSW is disposed (flow-controlled or otherwise) every incentive to operate properly in order to avoid the immense burden of environmental liability. In short, flow control simply has no effect on the Superfund liability of the parties engaged in this debate.

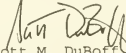
Recycling Programs Benefit From Flow Control. Finally, contrary to the one witness to address this point, flow control has had a quite positive impact on recycling. For example, flow control has played a very significant role in developing technologically advanced recycling facilities. See Report to Congress on Flow Control, pp. III-26 and -27. Moreover, virtually every congressional proposal on the subject excludes source separated recyclables from the scope of flow control authority. This is consistent with the typical state law authorizing the exercise of flow control authority over municipal solid waste, which also exclude source separated recyclables from the scope of flow control authority.

Conclusion. Reduced to its most basic terms, the current debate over flow control focuses on whether Congress will deny local government the right to decide how best to address a significant local problem -- MSW management. In that connection, it bears emphasis that proposed flow control legislation is permissive legislation only. No local government could exercise flow control authority without approval from the applicable state, and even with that approval the authority remains permissive. If reliance on flow control authority is not in the best overall interests of a community, then flow control authority will not be utilized.

* * *

The Local Government Coalition for Environmentally Sound Municipal Solid Waste Management appreciates the opportunity to submit these views to the Small Business Committee. Please direct any questions regarding these comments to the undersigned counsel to the Coalition.

Respectfully submitted,


Scott M. DuBoff
Kenneth S. Kaufmann
Wright & Talisman, P.C.

SMD/KSK/cap

cc: The Honorable John J. LaFalce
Members of the Small Business Committee

coalitio\1001-001.705

DEPARTMENT OF PUBLIC WORKS
Division of Solid Waste and Recycling
309 Second Avenue South-Room 210
Minneapolis MN 55401-2281



September 12, 1995

The Honorable Jan Meyers, Chair
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Meyers:

Thank you for holding an informational hearing on the impact of waste flow control. I am writing to share the City of Minneapolis' perspective on this issue, both as a local unit of government and as a small business.

Since 1994 Minneapolis has operated its organized collection system like a business, using a self-supporting solid waste enterprise fund to cover program costs. As a business, the City must set its residential solid waste fee based on the overall cost to provide services. The City of Minneapolis must be competitive with private haulers operating in the city, and with similar services provided in surrounding communities.

The City is very concerned about the financial impact waste flow control will have on its solid waste operations. When Hennepin County exercised flow control authority over the processing and disposal of waste generated in Minneapolis from 1990 to 1993, they charged a \$95 per ton tipping fee at the Hennepin County Energy Resource Company (HERC) waste-to-energy facility. In the process they amassed a \$25 million surplus in the Hennepin County solid waste enterprise fund in less than four years.


The Supreme Court's *Carbone* decision forced the County to compete with other waste disposal providers. As a result, the HERC tipping fee was reduced to \$60 per ton, without jeopardizing the repayment of outstanding bonds or threatening County waste management operations. Allowing flow control to be reinstated would eliminate any incentive for Hennepin County to be competitive, reduce costs, and improve services.

The Minneapolis City Council unanimously passed the enclosed resolution because they believe that waste flow control legislation will again allow Hennepin County to set a tipping fee that is in excess of their business needs, and which is considerably higher than what is being charged on the open market.

Granting broad flow control to quasi-public waste management authorities, County Boards, and regional commissions inhibits private sector competition, increases costs paid by small businesses and consumers, and runs contrary to the objectives articulated by the House leadership.

Thank you for your consideration of the City's concerns. I would be happy to provide you with additional information, should that be necessary. I can be reached at 612-673-2433.

Sincerely,


Susan Young, Director
Division of Solid Waste and Recycling
Department of Public Works
City of Minneapolis

REFERRED TO (NAME OF) COMMITTEE
DATE

95R-164
RESOLUTION
of the
CITY OF
MINNEAPOLIS

By Minn. Scott Dziedzic, Rainville, Niland, Cherryhomes, McDonald
 Campbell, Biernat, Herron, Thurber, Mead and Schulstad

Reaffirming the City's opposition to federal legislation which would authorize waste flow control.

Whereas, the United States Congress is considering passage of the Interstate Waste and Flow Control Act; and

Whereas, waste flow control is a practice whereby local governments, such as Hennepin County, require all waste within their jurisdiction to be processed at designated facilities; and

Whereas, waste flow control would protect inefficient waste management monopolies from private sector competition and eliminate their incentive to improve services and cut costs; and

Whereas, waste flow control would allow waste management prices to be set by political forces, without regard to the competitive marketplace; and

Whereas, waste flow control would artificially inflate what cities, towns and their citizens pay for waste processing and disposal; and

Whereas, waste flow control would inhibit the development of alternative waste management options and unnecessarily interfere with the ability of recyclers and other ecological entrepreneurs to expand market innovation; and

2

Whereas, a March 1995 United States Environmental Protection Agency study concluded that waste flow control is not necessary to protect human health and the environment and is not essential for developing solid waste management capacity or achieving recycling goals; and

Whereas, waste flow control would limit competition within the waste management industry, increase costs for local consumers, and discourage environmental innovation;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the City opposes federal legislation which would authorize waste flow control.

Be It Further Resolved that the Minneapolis Intergovernmental Relations staff be directed to aggressively lobby members of the Minnesota Congressional delegation on this issue.

RECORD OF COUNCIL VOTE (X INDICATES VOTE)													
COUNCIL MEMBER	AYE	NAY	NOT VOTING	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN	COUNCIL MEMBER	AYE	NAY	NOT VOTING	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN
Dziedziec	X						Thurber	X					
Campbell	X						McDonald	X					
Bremat	X						Mead	X					
Ramville	X						Schulstad	X					
Niland	X						Minn	X					
Scott	X						President	X					
Heron	X						Cherryhames	X					

PASSED MAY 26 1995 APPROVED ~~NOT APPROVED~~ ~~VETOED~~ MAY 31 1995

DATE DATE DATE DATE DATE DATE DATE DATE

Janice Chyz *Steve Bette*

PRESIDENT OF COUNCIL MAYOR

ATTEST *Monica Page*

CITY CLERK

September 4, 1995



The
Eastern
Rensselaer
County
Solid Waste
Management
Authority

389 Main Street
P.O. Box 267
Stephentown, NY
12168-0267

Tel: (518) 733-6224
Fax: (518) 766-9180

Margretta E. Morris
Executive Director

Representative Jan Meyers, Chairman
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20525-6315

Dear Congresswoman Meyers.

The Eastern Rensselaer County Solid Waste Management Authority consists of thirteen communities which banded together to take care of the waste which they were and are generating. The Authority *spent hundreds of thousands of dollars* evaluating systems and establishing plans for a cleaner New York. We have an approved plan which calls for extensive reduction measures, recycling, hazardous waste collection, composting and proper disposal of all residuals. All equipment, collection and transportation routes are formally and competitively bid. We utilize both private and municipal haulers and disposal sites.

Pursuant to State law, in 1990, our Authority decided to implement sound solid waste management. Our rights as municipalities and as individual citizens are being violated by this flow control nonsense. We have chosen how we want our waste treated. Who is the private sector to tell us that we taxpayers cannot reduce, recycle and compost?

It is my understanding that your Committee has been convinced to hold a hearing on flow control. To what end? Who convinced you? I have yet to hear a valid argument for why our communities cannot choose what happens to our own garbage. The only people who can afford to keep traveling to Washington are the large private sector hauling companies. The public sector has a job to do with severely limited tax dollars and can't be paying lobbyists or flying to Washington every other week. The flow control bill currently being considered by the House is nothing more than a "bonds only" bill. It only protects those communities that have actually bonded for a facility. It only protects those communities which have sunk millions of dollars into sound solid waste management. In Eastern Rensselaer County, we believe that those taxpayers in those towns, cities and counties should be protected by the very Federal government which they support.

I am respectfully requesting that this correspondence be incorporated into the hearing record as our Authority cannot afford and did not budget to have me just jump on a plane to Washington. We rely instead on our elected officials to seek the truth and not just listen to one profit oriented side of the story.

Sincerely,
Eastern Rensselaer County
Solid Waste Management Authority

By: 

Margretta E. Morris



DELAWARE SOLID WASTE AUTHORITY

N.C. Vasuki, P.E., DEE
Chief Executive Officer

Pasquale S. Canzano, P.E., DEE
Chief Operating Officer

Board of Directors

Richard V. Pryor
Chairman
Ronald G. McCabe
Vice Chairman
J. Donald Isaacs
Theodore W. Ryan
Phyllis M. McKinley
William G. Turner, Jr.
John P. Healy

September 6, 1995

The Honorable
Congresswoman Jan Meyers
2338 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Meyers:

On July 10, 1995, I wrote to you about flow control of solid wastes and how lack of such control results in reduction of small business involvement in solid waste collection services.

It is my understanding that you have authorized a hearing on this subject on September 13, 1995 and that persons opposed to congressional action on flow control have been invited to testify. I sincerely hope that you and your committee will allow a fair and balanced testimony for the record. In any case, I request you to include my July 10, 1995, letter (copy attached) into the record. I sincerely hope that you will also include a representative from the Solid Waste Association of North America (SWANA), the National Association of Counties (NACO), and the National League of Cities to testify at that hearing.

Sincerely yours,

N. C. Vasuki, P.E., DEE
Chief Executive Officer

Attachment

c: Congressman Michael Castle
Governor Thomas R. Carper
Board of Directors
Diane S. Shea, NACO
H. Lanier Hickman, SWANA

JE/A: MEYERS2.LTR



DELAWARE SOLID WASTE AUTHORITY

N.C. Vasuki, P.E., DEE
Chief Executive Officer

Pasquale S. Canzano, P.E., DEE
Chief Operating Officer

Board of Directors

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Chairman
Ronald G. McCabe
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Phyllis M. McKinley
William G. Turner, Jr.
John P. Healy

July 10, 1995

The Honorable
Congresswoman Jan Meyers
2338 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Meyers:

From news reports, it appears that the Small Business Administration (SBA) has reported to you that solid waste flow control imposes an economic burden on small businesses without concurrent environmental benefits. Obviously, the SBA has not studied the issue carefully and has jumped to assist big businesses which eagerly look forward to total relaxation of control.

SBA is wrong in its conclusion. In the total absence of flow control, time will prove that by the beginning of the new millennium a handful of large companies will control a vast majority of the solid waste collection business within the nation. There are good reasons why such consolidation will occur when all controls are eliminated.

The current trend in our nation, abetted by the U.S. EPA policy against incineration, is toward the development of huge landfills (or megafills in industry jargon) in relatively sparsely populated regions of some states. These megafills accept 3,000 to 5,000 tons of solid waste per day. Consequently, they can charge less per ton than smaller local landfills. Only large companies have the financial capabilities to construct such projects. Because these landfills will be located in remote areas, one would have to transport solid wastes using transfer stations or rail haul. Again, large companies develop such transfer stations and then vie for local business. The companies which control transfer stations and landfills will end up with most of the business and buy out small and family owned companies. If, in the future, there is a problem with a

privately owned landfill, and there are insufficient funds to correct the problem, history will again repeat itself and local and state governments will be held responsible for the extra costs of correction. Others who sent solid waste will also be liable, despite the paper assurance given by the companies.

In the State of Delaware, the Delaware Solid Waste Authority has exercised flow control since 1980 to ensure that solid waste discarded in the State is not sent to landfills in Kansas, Indiana, Ohio, Pennsylvania, Maryland, or Virginia. Small and large companies are treated alike and all pay the same user fee of \$58.50 per ton. This creates a true competitive scenario, with all companies pricing their hauling service to compete with each other. For this fee, DSWA assures long term capacity for solid waste disposal, with minimal liability, through voluntary recycling, collection of household hazardous wastes, educational programs, safe landfills, and waste to energy programs. On an average, a suburban homeowner in Delaware pays \$7.80 per month as the disposal fee to DSWA for financing and operating all the above mentioned programs. The cost of collection and transportation to DSWA facilities ranges between \$15.20 and \$3.00 per month depending on the location.

The attached table shows the gradual consolidation taking place in the collection business within Delaware even in a system with equal access and fee system. In 1975, Waste Management, BFI and Laidlaw were relatively small businesses. After enactment of the Resource Conservation and Recovery Act of 1976 and as a result of the proposals to regulate landfill construction and operation, a large number of small landfills quickly closed. The three major firms went on an acquisition binge and within a decade have eliminated a very large number of small businesses. I wonder if SBA is aware of it.

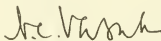
Congresswoman Meyers, the local governments, and special authorities created by the states in order to comply with RCRA Subtitle D, relied on earlier Supreme Court decisions and Federal mandates. We do not have the funds to lobby Congress in the same fashion as the large companies. We can only point to obvious consequences. If the Congressional leaders ignore the

consequences in their zeal to remove all controls, the nation will pay dearly in the long run and a new Congress will have to step in to reimpose sensible controls. The Savings and Loan fiasco is an example of deregulation which went awry!

I sincerely hope that you will not be mislead by the SBA statements. Under thoughtful scrutiny, you will find no basis for their conclusions as reported in the press. As a professional engineer who has worked for two decades to improve solid waste management practices, I know the consequences of haphazard decisions.

All of you in the U.S. Congress should pay attention to Justice Sandra O'Conner's admonition. I hope the Congress will act to correct the problem created by the U.S. Supreme Court decision and enact the flow control bill.

Sincerely yours,



N. C. Vasuki, P.E., DEE
Chief Executive Officer

cc: Governor Thomas R. Carper
Congressman Michael Castle
Board of Directors
Mr. Lanier Hickman

LICENSED PRIVATE COLLECTORS/HAULERS		
COMPETITIVE CHANGES	MUNICIPAL	PRIVATE
LICENSED IN 1988	20	62
LICENSED IN 1995	19	48
TOP 10 COLLECTORS: 65% OF ALL SOLID WASTE DELIVERED		
HARVEY & HARVEY/HOME WASTE/ARROW		
BFI		
BANDURSKI		
ALL RITE		
WHITE LINE/WASTE MANAGEMENT		
TOLLIVER		
EASTERN WASTE		
SHORE DISPOSAL		
ECONO HAUL		
J & M ENTERPRISES		



King County Executive
GARY LOCKE

September 13, 1995

The Honorable Jan Meyers
Chair, House Committee on Small Business
United States House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20525-6315

Dear Representative Meyers:

The purpose of this letter is to convey to you King County's interest in the hearings to be conducted by the House Committee on Small Business regarding solid waste flow control; and to provide you with background information that explains why flow control is an important management tool for King County and many other local governments.

King County provides solid waste transfer and disposal services to approximately one million residents and all businesses within the incorporated and unincorporated portions of the County, with the exception of the City of Seattle. The County's system consists of eleven transfer stations and landfills, all of which are owned and operated by the King County Solid Waste Division. The County's system also includes four privately owned construction, demolition, and landclearing waste (CDL) processing and transfer facilities which serve County residents pursuant to a contract with the County.

King County believes that flow control is an essential element in an integrated solid waste management system. The County's flow control ordinance directs solid wastes generated by County residents and businesses to the County's disposal system (including the privately operated CDL facilities in order to meet outstanding contractual obligations). Exercise of flow control authority over solid waste generated within King County is the most effective way of managing waste to meet the County's public health and environmental standards. It also ensures that the County is able to pay for the operation of the system exclusively through disposal fee revenues. Operation of the County's system includes significant fixed costs that must be paid, even if tonnages and disposal revenues decline. These costs include approximately \$109 million in outstanding debt for transfer station and landfill capital improvements.

I understand that your hearings on flow control will focus on the concerns of small business trying to enter the marketplace for solid waste management services. I urge your Committee to also focus on the federal mandates that make local government responsible for solid waste management. This responsibility requires long-term financial and operational commitments.

King County, like many local governments, had to incur debt and enter into long-term contractual arrangements with private facility operators when other management options were not available, or guarantees of waste volumes were necessary to make projects viable for the private sector.

King County understands and accepts that any flow control bill passed by the House will limit both the conditions and lifespan of flow control authority for local governments. We only request that any flow control bill that is passed include provisions that allow the County, and many other local governments, to pay debts incurred and honor outstanding contracts that were entered into in good faith under the County's existing flow control ordinance.

This requires a bill that would:

- Permit flow control to solid waste facilities, or systems of facilities, where flow control was implemented before May 15, 1994;
- Maintain flow control until a local government's outstanding bond debts are paid and contractual obligations have been fulfilled; and
- Allow flow control to facilities for which construction permits have been obtained, contracts were in effect, debt incurred, or construction and operating permit applications filed prior to May 15, 1994.

In closing, I appreciate the attention given by the House to flow control. If you have any specific questions or would like further information, please feel free to contact me at (206) 296-4040, or Rodney G. Hansen, Solid Waste Division Manager, at (206) 296-4385.

Thank you for your assistance in this matter of great importance to King County.

Sincerely,



Gary Locke
King County Executive

GL:MB:jl
mbflowmy



September 11, 1995

The Honorable Jan Meyers
2303 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Meyers:

I have just learned that Congress is considering legislation regarding "flow control" of solid waste. I would urge you to oppose all attempts to pass such legislation.

I am the owner of Neff Sales Company, Inc., a small business located in the Fairfax district of Kansas City. I employ thirteen people and we have been in business over thirty years.

It seems that this flow control legislation would create a small monopoly in this area where all of our waste would be directed. This non-competitive monopoly would certainly result in a higher cost to my company to have our trash hauled away.

With the trend in government now to less intrusion in private business, rather than more, I can't see why such legislation is even being considered.

I urge you to support mine and all other businesses in opposing this legislation.

Sincerely,

A handwritten signature in cursive script that reads "John R. Latenser".

John R. Latenser
President

2920 Fairfax Trafficway Kansas City, KS 66115 (913) 371-0777
Industrial Packaging Supplies and Equipment

ONEIDA - HERKIMER SOLID WASTE AUTHORITY

Board Members

James M. D'Onofrio, Vice Chairman
 Harry A. Hertlase, Treasurer
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Hana G. Arnold, Executive Director
 Philip A. Raybuhl, General Counsel
 Jodi M. Tuttle, Authority Secretary

September 8, 1995

Honorable Jan Meyers
 Member of Congress
 Chairman, Committee on Small Business
 2361 Rayburn House Office Building
 Washington, D.C. 20525-6315

Statement In Support Of Flow Control
September 13, 1995 Hearing

Dear Representative Meyers:

I request that this statement be submitted into the record of the hearing on the effect solid waste flow control has on small business. I am confident that a thorough and balanced review of the issues will lead to the conclusion that solid waste flow control clearly benefits the creation and expansion of small business.

I represent a system that serves upstate New York region of about 316,000 people. The region is diverse with two urban centers, many small villages and expansive rural areas. The area is going through major economic transitions with single large manufacturing firms giving way to many new small businesses. Federal reaffirmation of solid waste flow control will help continue the progress made by small businesses in our region.

Solid waste flow control is the legal ability for a waste generator (business owner, homeowner, etc.) and their elected representative to establish an integrated system of facilities and programs to collect, receive, process and dispose of various categories of solid waste. This legal authorization gives elected representatives the ability to direct waste to the reduction, recycling, processing and disposal facilities it has elected to establish to serve the waste generators. In this way, a solid waste management system is similar to a wastewater or drinking water system. Citizens recognize a problem and charge their elected officials to develop a system to solve that problem and serve their needs. Most importantly, when a community exercises flow control it does not exclude private sector involvement, it promotes extensive private involvement based on fair competition.

311 Turner Street, Suite 401, Utica, NY 13501 (315)733-1224

There are five important advantages that solid waste flow control give to small business:

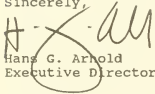
1. **FAIR RULES EVENLY APPLIED** - The requirements for how waste is separated, set out, and collected are consistent. That means, for example, that small scale private waste collection businesses can compete with larger firms on a fair and equitable basis. In our region over 40 small family owned businesses successfully compete with the largest international companies.
2. **SAME FEES REGARDLESS OF SIZE** - Fees for the processing and disposal of waste are charged on a unit basis. Therefore, large waste collection companies do not gain an unfair advantage over small collection businesses. In the past, and without flow control, large waste companies owned the landfill and provided collection services. This often forced small collection businesses to fold. Of course, the impact on all waste generators was that costs increased sharply. Without flow control this pattern can return. Many small waste collectors will go out of business, and with less competition costs for such service will rise hurting small business. Many small businesses will again suffer from having their options reduced.
3. **USER FEES NOT TAXES** - Fees for waste services are charged on the basis of waste actually delivered. A small business can take charge of its own waste generation and reduce and recycle as much as possible thereby lowering its costs. In our region, flow control has allowed for the development of a system without impacting local property taxes. Without flow control, local taxes will have to be increased to support solid waste services. This will have a severe impact on small businesses because the tax assessment bears no relationship to the level of solid waste service used and because small business must then pay, through the property tax, for tax exempt properties and waste generators who would not pay their fair share under a local tax assessment formula. In our two counties, there is over 20% and 30% tax exempt property respectively. Without waste flow control local taxes will increase. Further, flow control has permitted revenue bond financing of the facilities needed to process waste. Without it, more expensive methods of project financing will have to be used and that will raise costs to small business. Without federal reaffirmation of flow control, the financial community has clearly indicated that credit ratings will be lowered translating into higher government costs - and therefore, a negative impact on small business.

4. **ENVIRONMENTAL SECURITY** - It is critical to every generator that their waste be managed in an environmentally sound fashion. If not managed properly, not only is the environment jeopardized, but the generator is held responsible, often at a considerable expense. Small business can't afford to be placed in this kind of severe economic risk. Flow control insures that only environmentally compliant facilities are used. Without flow control, waste would tend to go to marginal facilities. In our region, we help save money for many small businesses by processing their small quantities of hazardous waste at a special facility. Without flow control this would not be possible.
5. **REDUCTION AND RECYCLING** - Minimizing the amount of waste that must be discarded and recycling as much as possible are clearly goals of small business. Flow control has allowed the development of reduction and recycling based systems. This has allowed for the creation of new small businesses that are utilizing the "feedstock" created by community recycling programs. In our region, a paper company built a \$25 million facility to produce pulp from discarded office paper. I've attached a copy of their letter supporting flow control. Another company was started to recycle plastics. A third now makes fibre from plastics to create fabric for insulated outerwear.

It is imperative that Congress act to reaffirm waste flow control. Without it, small business will be severely impacted. Local taxes will increase and the higher cost of government services will be passed back to small business. Without flow control, a few large waste management companies will force small collection business to fold. Without flow control, there will be short and long-term negative economic impacts on small business. Without flow control, the owner of a small business will not be able to exercise control over his or her economic and environmental risks.

I request and urge your support of waste flow control.

Sincerely,


Hans G. Arnold
Executive Director



R. W. BURROWS, JR.
PRESIDENT

Sent to: Assemblyman Casala

Senators: Seward, Reflin, D'Amato, Moynihan and Lautenberg
Congressmen: Minge, McMillan, Boucher, Paxon, Mancon,
Sharp and Dingell

June 20, 1994

1-
2-
3-

Dear 4-:

As president and chief executive officer of Burrows Paper Corp., I want to express support for your immediate action to reaffirm "flow control" for local governments who have undertaken solid waste management projects.

Burrows is an integrated paper company which is strongly committed to the use of recycled paper in a wide range of its products. We recognize that the new municipal recycling programs put in place over the last several years are bringing new and extensive volumes of discarded paper into mills for recycling.

It is preferred that these local government recycling programs continue and expand and that flow control be reaffirmed in the wake of Carbone v. Clarkstown.

I am aware that there are several bills which would address the flow control situation. I urge you to enact at the earliest possible date, a law which would broadly grandfather flow control for communities which have employed it in developing their solid waste management system. This is essential not only for local government, but for the private paper recycling industries. To meet our goals of 50% recycled fiber content, we must continue the partnership with local government recycling programs. Your immediate action is needed.

Sincerely,

R W Burrows Jr

R. W. Burrows, Jr. *RWB*

RWB/jmt

301 WEST MAIN STREET
LITTLE FALLS, NEW YORK 13365
(315) 823-2300 • FAX (315) 823-2417



Snohomish County

County Executive's Office

Robert J. Drawel
County Executive

M/S #407
3000 Rockefeller Avenue
Everett, WA 98201
(206) 388-3460
FAX (206) 388-3434

September 27, 1995

The Honorable Jan Meyers
Chair, Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515-6315

Dear Representative Meyers:

Thank you for taking the time to schedule a hearing on municipal solid waste flow control. This is an issue which appears to be quite clear initially, but has enough complexity under the surface so as to make a hearing such as yours extremely valuable.

Snohomish County, Washington, has been constructively involved with, and communicated with our congressional representatives on the flow control issue since 1992. We have consistently promoted a moderate approach as necessary for resolution of the issue. In November, 1993, six months before the *Carbone* decision, we testified before the House Subcommittee on Transportation and Hazardous Materials, and presented what then-Chairman Swift regarded as the first proposed compromise solution.

Snohomish County currently owes approximately fifty million dollars in solid waste indebtedness, and is contractually bound to provide its solid waste stream to a private disposal facility until 1999. While we are interested in protecting our ability to fulfill these commitments, we don't operate in a political vacuum. It would be difficult for us to hold a position which protected the County as an entity, but worked to the detriment of business, including small businesses, within the county.

Our current position is support for flow control for those jurisdictions which, like Snohomish County, are responsible for the repayment of bonds or fulfillment of contracts, when the obligations were

undertaken in good faith reliance on flow control. Such flow control powers would last only until the obligations are fulfilled. Except for jurisdictions with such obligations, and except for that period of time when the obligations were still outstanding, there would be no flow control. As we understand the situation, this is the legislative solution proposed by Representative Bliley, Chairman of the Commerce Committee, and publicly accepted by the opponents and proponents of flow control.

One factor in our support of this position is that the costs associated with fulfilling the obligations are not discretionary. Since the bonds must be repaid, and the contract must be fulfilled, we have no choice but to raise the money to pay these costs. If we have flow control powers, the costs will be paid through fees for the disposal of solid waste. If we don't have flow control powers, they will come from the taxpayers in some other way. Since the costs are the result of solid waste related expenses, it seems most equitable to place the costs upon those who generate solid waste. This is a form of user fee, and as we understand it, such fees are generally the preferred method of raising revenue when feasible.

From the exclusive perspective of small business, using solid waste disposal fees in comparison with other revenue sources seems similarly desirable. It would seem more appropriate for a business which generates large amounts of solid waste to pay the costs associated with generation of that waste, rather than other businesses which generate less waste.

An additional consideration is the fact that the relationship between flow control and small business is a complex one. On the surface it seems that flow control would harm small business in two ways. First, under flow control small garbage haulers are not free to take waste to the least expensive disposal alternative, and thus their profits are reduced. Second, since haulers can not dispose of waste at the least expensive disposal alternative, they must pass the higher costs which result from a non-competitive environment on to their customers, including small businesses.

Solid waste management is, however, surprisingly complex. The attached article is from the September 15 issue of The Wall Street Journal. It recounts an agreement between Browning Ferris Industries (BFI), the second largest solid waste company in the world, and BKK, a smaller regional solid waste company. BKK agreed to close its dump in southern California when a proposed BFI dump was open and able to accept waste. The article points out that small haulers are expected to be injured by the agreement because they will find it increasingly difficult to compete with BFI as BFI controls a greater proportion of local disposal capacity. The net effect will be fewer small haulers in



the area. Since it is reasonable to assume that the existence of more haulers increases competitive pressure, it is also reasonable to believe that, in this case at least, flow control would actually lead to lower disposal costs for all consumers, including small businesses.

We recognize that situations as the one described may not exist across the country. In some states flow control may not be in the consumers best interest, and could increase costs to small businesses. In light of these uniquely local impacts, it would seem as misguided for Congress to prohibit flow control throughout the country as it would for Congress to require flow control throughout the country. To account for the fact that the implementation of flow control may be wise in certain states and misguided in others, all of the flow control legislation being considered is permissive in nature, not mandatory. State legislatures are in the best position to consider each individual situation and decide whether their citizens, including small business owners, would benefit from or be injured by flow control.

Thank you for your consideration of these issues. If you have any questions, please feel free to call our Solid Waste Management Director, Jeff Kelley-Clarke, at (206) 388-6486, or Steve Goldstein at (206) 388-6483.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert J. Drewel".

Robert J. Drewel
County Executive

c: Representative Jack Metcalf via Mr. Rob Meier
Representative Rick White via Ms. Glynda Becker

Attachment

BUSINESS BRIEFS

Browning-Ferris Signs Agreement For BKK to Close Garbage Dump

By JEFF BAILEY

Staff Reporter of THE WALL STREET JOURNAL

Browning-Ferris Industries Inc., an increasingly aggressive No. 2 in the waste business, entered into an unusual agreement with a Los Angeles-area competitor that would result in the closing of that market's busiest garbage dump, helping to prop up disposal prices.

The agreement could quickly make disposal capacity owned by Browning-Ferris and others more profitable, and encourage a brutal market-share battle in the trash-hauling business in Southern California. The move is the latest evidence of accelerating consolidation in the waste industry, and one that could very soon put smaller haulers at a disadvantage.

"If I was a small hauler, I'd be thinking that it's time to sell," the operator of one of the region's biggest dumps said yesterday.

That's because, as part of the agreement between Houston-based Browning-Ferris and BKK Corp., Torrance, Calif., closely held BKK would close its huge West Covina dump. The dump has been accepting about 12,000 tons a day of trash for as little as \$12 a ton, driving disposal prices in the market sharply downward.

That inexpensive fee, however, has been a boost to smaller commercial and municipal haulers who don't own their own dumps, and has hurt profits of other dump owners.

The dump's closing wouldn't take place until Browning-Ferris's big dump in the San Fernando Valley, known as Sunshine Canyon, reopens; it initially could take about 6,000 tons a day and has for years been fighting for city and county of Los Angeles approvals to reopen. A crucial county Board of Supervisors vote comes next month. Ultimately, the site could hold 100 million tons of trash. The earliest it could reopen is next spring.

The agreement also calls for Browning-

Ferris to buy a BKK proposed dump site that is within a mile of Sunshine Canyon and could have posed serious competition. The BKK site has proposed capacity of about 195 million tons, nearly enough to bury a year's worth of U.S. garbage. Browning-Ferris said it would "review the timetable" for opening the BKK site, though company officials acknowledged that plans to open the site might very well be abandoned.

Browning-Ferris wouldn't disclose details of the transaction, which is contingent on the reopening of Sunshine Canyon, other than to say that BKK's owners would receive cash and not Browning-Ferris stock. BKK officials wouldn't comment on the price. Browning-Ferris isn't buying the West Covina dump, which that city has wanted closed for some time. Prior to the agreement, it might have stayed open through 2006.

Browning-Ferris would also buy a BKK trash-transfer station in the Los Angeles Harbor area and some recycling facilities. Browning-Ferris currently hauls just 2,300 tons per day of trash in Los Angeles County, though this agreement could give it pricing leverage over smaller haulers in competing for contracts. The county generates about 40,000 tons a day. WMX Technologies Inc., the No. 1 hauler in the U.S., and Laidlaw Inc., No. 3, both operate dumps in the area, too.

The aggressive move to reduce potential dump capacity in Southern California is an abrupt change. Just years ago, a capacity shortage seemed certain, and national haulers were pursuing megadumps in the desert to handle Los Angeles trash by rail. But recession and recycling cut into trash volumes. Browning-Ferris a year ago abandoned its desert project, what would be the nation's biggest dump, a 700 million-ton converted iron ore mine. Its former partners are still pursuing the project.

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